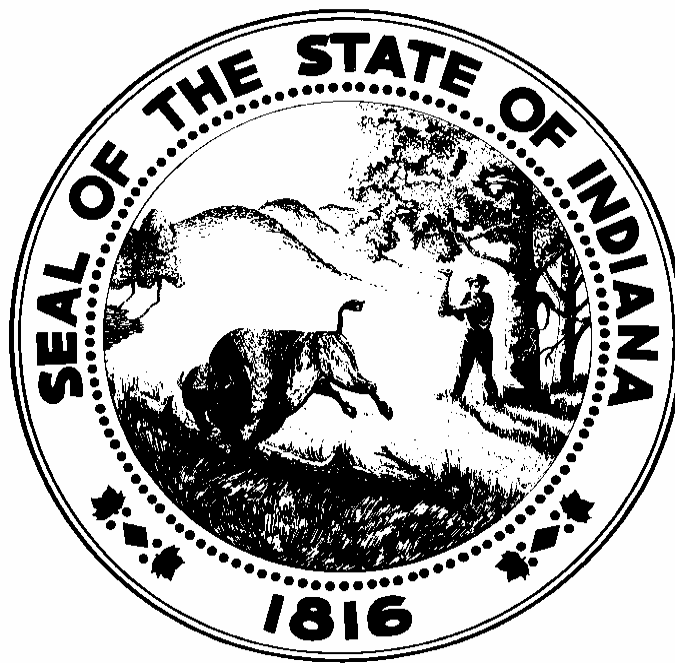


*Professional Services  
Contract Manual*

*FEBRUARY, 2006*



*The Indiana Department of Administration*

Earl A. Goode  
Commissioner

Susan W. Gard  
Deputy Commissioner and General Counsel



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## Introduction

The Indiana Department of Administration is pleased to present the *2006 Professional Services Contract Manual*.

The *Manual* is intended to assist State agencies in the preparation of professional services contracts and to provide information on how contracts and grant agreements should be submitted through the approval process.

Please review the *Manual* carefully. It will guide you in the preparation of personal / professional service contracts and grant agreements. If your agency has a staff attorney, you should work with him or her first with any questions. If you still have questions, please feel free to contact a member of the Contract Management Section.

### Contract Management Section:

Susan Gard	(317) 234-1596	sgard@idoa.IN.gov
Sandra Redding	(317) 232-3153	contracts@idoa.IN.gov
Fax Number	(317) 233-8252	

If you have suggestions for improving the Manual or the contract review process, please let us know!

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Deputy Commissioner  
Department of Administration

## FREQUENTLY ASKED QUESTIONS

**Do I need an EDS (Executive Document Summary) with every contract I submit?** Yes. A contract cannot be routed through the signature process without a fully completed EDS. The EDS form is available on-line at <http://www.in.gov/icpr/webfile/formsdiv/41221.pdf>. Use of the EDS sheet is covered in greater detail later in this Manual.

**How do I assign an EDS number to an agreement?** Each agency is assigned one or more APS (Automatic Procurement System) code to begin the EDS number. The APS code usually consists of a letter followed by two or three numbers (*i.e.*, IDOA is C 39). The EDS number consists of (1) an APS code, (2) fiscal year (which runs July 1 – June 30; fiscal year '06 began July 1, 2005), and (3) a combination of letters or digits in an order that your agency finds most helpful in contract management. If you do not know your agency's APS code, you should send an e-mail to [contracts@idoa.IN.gov](mailto:contracts@idoa.IN.gov), and we will assist you in getting that information.

**If the vendor is an individual, what do I use for the taxpayer identification number on the EDS sheet?** Five "x's" followed by the last 4 digits of the Social Security number, *i.e.*, "xxx-xx-1234". Because the contract and the EDS sheet are public records, you should ensure that these documents do NOT include an individual's social security number. *See* Indiana Code 4-1-10.

**Can I renew or amend a contract after the expiration date?** No. An expired contract cannot be renewed or amended. If you want to renew or amend a contract or grant, you must have the contractor's (or grantee's) signature on the renewal or amendment prior to the expiration date of the original contract. If you are doing a straight renewal where no consent or agreement of the contractor is required, then the signature of the agency is required prior to the expiration of the underlying term.

**Do I need a Non-Collusion Statement in an Amendment or a Renewal?** Yes, always. This clause must be included in all amendments and/or renewals. The ability to collude becomes greater once a relationship has been established with a Contractor.

**What is the difference between an Amendment and an Addendum?** An Amendment changes or adds to the terms or conditions of an existing contract. An Addendum is to be attached to a contractor's form contract for purposes of deleting terms to which the State cannot agree and adding the mandatory clauses in any State contract. The State does NOT sign the form contract – only the Addendum.

**Do I need to seek competition when selecting a vendor?** Absolutely. Analysis and discussion of the procurement process and the use of RFP's and bids is beyond the scope of materials covered in this Manual. You should become thoroughly familiar with IC 5-22 if there is any question about the type of competition and procurement you should use in pursuing a particular contract. Even Special Procurements under IC 5-22-10 require competition, documentation and approval of IDOA's commissioner.

**My contract has been pre-approved by the Attorney General's Office but denied by IDOA. How can that happen?** IDOA and the OAG serve different functions in the contract approval process. While the OAG reviews contracts for form and legality, the IDOA focuses on policy, contract language and procedures, and business issues. Just because the contract is legal does not mean that underlying transaction is consistent with the State's policies, purchasing procedures, or that it is in the State's best interests.

**Does IOT need to approve my contract?** Any contract that includes information technology goods or services must be reviewed by IOT so that IOT can ensure that the goods and/or services are compatible with the State's current IT investment. Examples like the procurement of hardware, software, applications development, or website development are obvious; however, outsourcing contracts almost always involve IT issues. Delegation information and IOT's IT standards are available at <http://www.in.gov/iot/>. If you are unsure about whether your contract will require IOT approval or if you have any other questions, please contact IOT at [contracts@iot.in.gov](mailto:contracts@iot.in.gov) and (317) 232-3172.

**Can I have a contract for more than four years?** It is IDOA's policy that a contract shall not exceed four years. If, however, you have a compelling business reason to exceed the four-year limit, you may do so, but you must first obtain written approval from the IDOA Contract Administration. This approval should be sought well in advance of the expiration of an existing contract.

**What do I do when I need to rush through a contract?** Send an e-mail to [contracts@idoa.IN.gov](mailto:contracts@idoa.IN.gov), to [jorebaugh@sba.state.in.us](mailto:jorebaugh@sba.state.in.us), and to [contracts@atg.IN.gov](mailto:contracts@atg.IN.gov). You will need to provide the EDS number, name of Contractor, the reason for requesting the rush, and the anticipated delivery time to IDOA. Do not just show up with a rush and expect to wait while someone reviews it. If you give us advance notice and a reasonable explanation, we will make every effort to accommodate you.

**Can I submit a contract with faxed or stamped signatures?** You can submit it, but it will be rejected. Only contracts with original signatures will be approved.

**What is the policy on approving duplicate originals?** IDOA, Budget, and the OAG strongly discourage the routine use of duplicate originals. We anticipate requiring those few agencies that seem to use them routinely to justify why two or more originals are necessary.

### CONTRACT APPROVAL PROCESS

Indiana Code section 4-13-2-14.1(a) requires that, after signature by the vendor and the agency, contracts must be approved by (1) IDOA, (2) the Office of Management and Budget ("Budget"), and (3) the Office of the Attorney General ("OAG"). Unless your agency has specific delegated authority from IDOA or Budget, or is using a specific contract that has been given written form approval by the OAG within the last 12 months, it will have to be circulated through these 3 agencies for approval.

Sufficient lead-time should be given when preparing a contract so it can be reviewed and executed by the approving agencies. We suggest allowing 60 days for this process. IDOA tries to review each contract within five (5) working days of receipt, as does Budget. By statute, the Office of the Attorney General is allowed forty five (45) days to review a contract, although they try to do so more quickly.

When you have assembled the fully signed contract (or grant) with all attachments and exhibits, the tax clearances, and the Indiana Economic Impact form (when applicable), put the completed EDS sheet on the top, and deliver it to IDOA's reception area (IGCS, 4<sup>th</sup> floor, Room W 479). Unless you include other instructions, the contract will be forwarded to Budget, and Budget will forward it to the OAG. The OAG will notify the courier listed on the EDS sheet to pick up the contract from the OAG's office on the 5<sup>th</sup> floor of IGCS when it has been approved. The OAG is unable to return contracts by mail, so you will need to include a return envelope if you do not have a courier who will pick up the completed contract.

Approved Contracts On Line – As required by Executive Order 05-07, IDOA currently maintains a list of all active state contracts on its website at <http://www.IN.gov/idoa/contracts/>. It is in the process

of further implementing the Executive Order by scanning all active contracts for posting. *This may add an extra day to the process, and we will endeavor to keep you advised of any impact this may have on the process.*

### **INTRANET CONTRACT TRACKING SYSTEM**

The Contract Tracking System (“KMS”) has been designed to help agencies locate their contracts as they make their way through the signature process. This system is only available on the Intranet. Once the contract has been entered into KMS, you can retrieve information regarding the status of that contract.

To access the contract search site on the Intranet take the following steps:

Open your web browser and go to <http://intranet.idoa.state.in.us/>

Go to the drop down box in the upper right hand corner of the web page and select **Contract Search**

When the “Welcome” page shows up, read and click on **Continue**.

You have reached the search criteria. Choose how you want to search, *i.e.* EDS number, Contractor’s name, etc.

Click Search and the search results will appear.

To locate the routing information, click on the EDS number

If you are unable to access the Intranet, please e-mail [contracts@idoa.IN.gov](mailto:contracts@idoa.IN.gov), or call Sandra Redding at 317/232-3153.

### **OFFICE OF THE ATTORNEY GENERAL**

Indiana Code section 4-13-2-14.3 provides that the OAG “must review for form and legality contracts to which a state agency is a party....” If the OAG finds a contract does not meet form and legality requirements, the contract must be disapproved in writing, with an explanation of how it is legally defective, and advice on how to make it compliant. The same statute gives the OAG up to 45 days to conduct this review.

If you have a contract that needs to be rushed, you should contact the OAG via e-mail at [contracts@atg.IN.gov](mailto:contracts@atg.IN.gov). Include the EDS # of the contract and an explanation of why the rush is required. Do not tell one of your vendors or contractors to contact the OAG directly. The OAG will not respond to direct inquiries from contractors, and will refer all such inquiries back to the originating agency.

### **Office of the Attorney General Form Approval and Pre-Review Guidelines**

Following is the process by which the Office of the Attorney General (“OAG”) can help to ensure the integrity of the form approval and pre-review process, while making the transition to form approvals smooth and efficient.



## **Form Approval and Pre-Review - Frequently Asked Questions**

### **What is the difference Between a Form Approval and a Pre-Reviewed Contract?**

A form approval is a template form which may be used by an agency for one year from the date of approval. Contracts entered into within that year using the approved form do not have to be reviewed by the Attorney General for form and legality. No changes can be made to the approved form other than filling in the template blanks.

A pre-reviewed contract is a template form which may be used by an agency for one year from the date of approval. Contracts entered into within that year using the approved form still have to be reviewed by the Attorney General for form and legality, but the pre-review should expedite the review process. On the condition that no changes are made to the form other than filling in the template blanks, it may be possible for an agency to eventually move from pre-review to a form approval status.

The OAG will determine which contracts are appropriate for form approval versus pre-review based on past proper use of form approval, length of time the agency has been in existence, length of time current staff have been in place, availability and experience of legal counsel within the contracting entity, and any other factors that may impact the integrity of the process.

### **What are the advantages in using form approval and/or pre-review?**

Use of form approved and pre-reviewed contracts has the advantage of speeding up the contract approval process and providing the contracting state entity with a consistent legal document that is lawful as to form and content. The form approval and pre-review contract process is intended for use when a contracting state entity anticipates a high number of contracts for the same purpose/services with different contractors. Once form approval is obtained, the individual contracts using the approved form do not have to be reviewed and signed by the OAG. Eliminating the OAG from the contract signature process potentially saves up to 45 days in the approval process since by state statute the OAG has 45 days to review contracts.

Although the OAG must still review and sign contracts that use a pre-reviewed form, these contracts will take less time for approval since the OAG has previously reviewed and approved the contract form. The form approval and pre-review process also requires the involvement of the contracting entity's legal counsel. Since the state entity is a party to the contract, the entity's own counsel is in the best position to advise the entity on the particular contract terms and clauses that are necessary to meet the entity's needs. This will also ensure that the OAG is only being asked to review and approve for form and legality those contract documents that have already been determined to meet the legal needs of the contracting entity.

### **What is the length of time for approval of pre-reviewed contracts?**

The OAG will make every effort to expedite the review of pre-reviewed contracts that are received for signature. The contracting state entity should ensure that the pre-approved template has been properly filled-in and signed by the parties before the contract is submitted into the state signature process.

### **Requirements for Form Approval**

**Form Approval Automatic Denials.** As a matter of policy, the OAG will not give form approval for contracts when the Department of Administration has delegated approval and signature authority to the state entity that generated the contract. Please note, however, these contracts may be submitted to the OAG for pre-review.

**Contact Person.** If your agency has legal counsel, all requests for form approval must be reviewed by counsel before being submitted to the OAG. In most instances, the legal counsel should be the contact person with the OAG with regard to the form approval request. Only if the contracting entity does not have legal counsel, there should be one contact person within the entity identified as the contact person. The contact person should be the director/commissioner, or one person designated by the director/commissioner as the contact person. This person should be the sole contact with the OAG with regard to form approvals and pre-reviews.

## **OAG Form Approval/Pre-Review Request Requirements**

### **Form Approval/Pre-Review Request Sheet**

A Form Approval/Pre-Review Request Sheet must be submitted with all requests for form approval or pre-review. The completed form must be signed by legal counsel for the agency. **You must submit one request sheet per contract.** A completed form is considered “signed” if e-mailed by anyone from the agency as a pdf. file with an actual or electronic signature from legal counsel; otherwise, the form must have legal counsel’s name typed in and the e-mail must originate from counsel’s e-mail account. ***If you intend to use mail merge for these contracts*** you **must** indicate this on the request form when submitting the contract for review.

### **Form Approval/Pre-Review Contract Submission**

*Statutory Authority.* The contracting entity’s statutory authority for the contract must be included on the request form. The OAG also strongly encourages referencing the statutory authority in the body of the contract. **Example** (**DO NOT USE** this as your statutory authority unless applicable to your agency): “This grant is authorized by IC 5-19-1, IC 4-23-7.1 and other laws pertaining to local and district library systems. Grants will be made to organizations and libraries eligible to receive funds under the Library and Services Technology Act, 20 U.S.C. §§ 9121 to 9123.”

It is the agency’s responsibility to stay apprised of any state or federal law which has an effect on this contract. The OAG must be notified immediately of any such change. Any change of law immediately invalidates the form approval or pre-review status and the form should be resubmitted. This **does not** mean that fully executed contracts based on these forms become invalid; it only means that the form **must** be resubmitted for form approval/pre-review if you want to continue to use that process.

**State Boilerplate.** A draft of the contract that you are submitting for form approval or pre-review must be submitted electronically along with the request form. The OAG strongly encourages contracting entities to use the State’s standard boilerplate clauses when drafting contract documents.

**Prepared By Statement.** In order to identify the creator of form approved and pre-reviewed contracts, a *prepared by* statement is required on the document. This will also satisfy the requirement for instruments that may be received for recording or filing under IC 36-2-11-15. This statement must appear at the bottom of the signature page of the contract.

In addition, an initial block should follow the prepared by statement **for form approved** contracts. This is verification that each form approved contract has actually been reviewed by the agency legal counsel before execution. In this way, agency legal counsel ensures the initial and final integrity of the contract.

**Example (pre-reviewed contracts):** “This instrument was prepared by (*name/title*) on (*date*).”

**Expedited Requests.** Please allow 30 days for review. We cannot guarantee that all expedited requests will be granted. Any requests for expedited review must include the effective date of the contract and the reason for expedited review

**Formatting.** Please follow the format used in the IDOA Professional Services Contract Manual to the maximum extent possible. After non-collusion, the page will read “**The rest of this page left blank intentionally**”, and the signature page will be on the following page. All attachments should be labeled in alphabetical order beginning with A (ex. Exhibit A, Exhibit B, Exhibit C)

**Approval Letter.** Contracts that have received form approval will have the following statement in place of the regular Attorney General signature block: “Form approval has been granted by the Office of the Attorney General pursuant to IC 4-13-2-14.3(e) on (approval date).” The OAG will send a letter to the agency legal counsel or primary contact upon approval of the form approved/pre-reviewed contract. In addition, IDOA will be provided with copies of all form approvals to help monitor the integrity of the process.

**Destruction of Old Forms.** The OAG strongly encourages the agency legal counsel or contact person and all contract writers to destroy all electronic copies of old forms upon receipt of final approval of the new form contract.

**Effective/Expiration Date.** The form is approved for use as of the date of the letter. Approval expires exactly one year from that date.

**Name of Form Approved/Pre-Reviewed Contract.** The OAG, for clarity, will assign a name and number to the form approved/pre-reviewed contract. When corresponding with the OAG or attempting to renew the form, please use this name and number.

*Contracts that are form approved must still follow the regular state signature process, except they are not submitted to the OAG for signature.*

#### **Use of Form Approved or Pre-Reviewed Contracts**

**Changes to Form.** Contracts that have been form approved or pre-reviewed will be in a template format. This document will have blank spaces for the contractor/grantee name, term, duties, etc. Only the blank spaces may be modified (referred to as a “filled-in form”). **Any other changes to the document are not permitted.** If any new contract provisions become required during the term of the form approval or if the contracting entity determines that other changes are needed in the contract document, the revised form **must be resubmitted** to the OAG for approval. The contracting entity cannot simply change or add language to a previously approved form and continue using the form. **Example:** The ethics clause became a requirement for state contracts around July 2004. If form approval for a certain contract extended through August 2004, the contract, *in July 2004*, should have been resubmitted for approval after adding the ethics clause. Impermissible actions would have included (1) adding the ethics clause without resubmitting to the OAG, or (2) simply failing to add the ethics clause until August 2004.

**Legal Counsel Review.** Before submitting a contract for form approval or pre-review, all contracting entities with legal counsel must have their counsel review the contract. After a contract format has been approved for use, the OAG requires legal counsel to review all filled-in forms for accuracy before signature by the contracting parties.

#### **Pre-Review**

Contracts that have been pre-reviewed will still be submitted to the OAG for signature; however, the OAG will make every attempt to expedite the signature of these contracts. An EDS form printed on orange paper should be attached to the front of all pre-reviewed contracts to signal to OAG staff that the contract has been pre-reviewed. This will help to expedite the signature process. Please note that

attaching an orange EDS sheet to a non-pre-reviewed contract may result in revocation of the approval to use pre-reviewed or form approved contracts.

## **OFFICE OF THE ATTORNEY GENERAL CONSENT FOR REPRESENTATION OF STATE**

**I. Statutory Authority for Consent to Hire Outside Counsel.** The statutory authority of the Attorney General to consent to outside counsel to represent the State of Indiana is found at IC 4-6-5-3:

No agency, except as provided in this chapter, shall have any right to name, appoint, employ, or hire any attorney or special or general counsel to represent it or perform any legal service in behalf of such agency and the state without the written consent of the attorney general.

This authority reflects the working relationship between the various state entities that make up the clients of the Attorney General. Generally, a request to hire outside counsel will be initiated by a state agency in the form of a written request. This request will outline the specific reasons for hiring outside counsel, the scope of services to be performed and other contract terms and conditions.

There are various statutory exemptions giving an agency the authority to hire it's own outside counsel. You should consult the Indiana Code when in doubt.

### **II. Requests to Hire Outside Counsel**

A request to hire outside counsel must be made in writing. Please address your letter to the attention of Greg Zoeller, Chief Deputy, Office of the Attorney General.

The following information is required in the letter requesting permission to hire outside counsel:

Name and address of state agency

Agency contact person and telephone number

Legal matter for which outside counsel is requested

Description of the scope of services to be provided and justification for the use of outside counsel

Name and address of recommended law firm and/or attorney(s)/paralegal(s)/law clerk(s)

Proposed hourly rate(s) for attorneys, paralegals and other staff. In cooperation with the Governor's Office, the Attorney General's Office has set an hourly cap at \$200 per hour. There can be exceptions to that rate depending on the type of work involved. However, that will require approval directly from the Attorney General and the Governor.

Proposed maximum amount of contract

In the alternative, an agency may use the following form provided by the Office of the Governor.



STATE OF INDIANA  
OFFICE OF THE GOVERNOR

State House, Second Floor  
Indianapolis, Indiana 46204

Mitchell E. Daniels, Jr  
*Governor*

**To:** Agency Counsel  
**From:** General Counsel – Office of the Governor  
**Date:**  
**Re:** Attorney General Approval of Outside Counsel

Dear Agency Counsel:

This form is being provided to you for completion in conjunction with the Attorney General's required procedures for obtaining approval of Outside Counsel. By statute, the Attorney General's Office is required to approve all arrangements made with Outside Counsel before work on various projects may commence.

These approval procedures have been implemented for several reasons, including but not limited to: one, it insures that the State is not paying for services that in fact the Attorney General's Office can provide; two, it allows the Attorney General in advance to have a better grasp, understanding, and knowledge of work that they may later be required to defend; and three, it allows the Attorney General to insure that a conflict of interest will not arise for the State or any other State entities.

Please provide the information requested in the chart below or in an attached document. If you have any questions related to this procedure, please do not hesitate to contact our office.

Sincerely,

Information Concerning Proposed Outside Counsel Agreement	
<b><i>Firm:</i></b>	
<b><i>Principal Counsel:</i></b>	
<b><i>Client:</i></b>	
<b><i>Project:</i></b>	
<b><i>Counsel Duties:</i></b>	
<b><i>Term of Agreement:</i></b>	
<b><i>Not To Exceed Amount (\$\$):</i></b>	
<b><i>Renewal Language (Y/N):</i></b>	
<b><i>Hourly Rates:</i></b>	

## **GUIDELINES FOR ETHICAL CONTRACTING PRACTICES**

Elected and appointed state officials and state employees are entrusted with the safety and welfare of taxpayers. Citizens are entitled to have complete confidence in the integrity of their government and expect State employees' private interests will not conflict with public business. To maintain the integrity and credibility of contracting, a clear set of guidelines, rules and responsibilities to govern the behavior of State employees is required.

General standards of ethical conduct for State employees are enumerated in 42 IAC 1-5-1 through 15; and 42 IAC 1-6-2. A State employee who violates either these statute sections or rules may be subject to State Ethics Commission sanctions and/or agency disciplinary action. Pursuant to 42 IAC 1-7 and 42 IAC 1-8, State employees have the right to have any ethics question reviewed and decided by the State Ethics Commission. If you have a question about a specific action, please contact the State Ethics Commission directly.

For complete information regarding ethical practices in contracting, refer to the Ethics Commission website @ <http://www.in.gov/ethics>. or call the Ethics Commission at (317) 232-3850.

## **MINORITY AND WOMEN'S BUSINESS ENTERPRISES DIVISION**

IDOA's Minority and Women's Business Enterprise Development ("M/WBE") division is established by IC 4-13-16.5. As required by statute, the M/WBE division identifies and certifies minority and women's business enterprises for State projects. The statute also requires "all state agencies, separate bodies corporate and politic, and state educational institutions to report [to the division] on planned and actual participation of minority and women's business enterprises in contracts awarded by state agencies," and "determine[s] and define[s] opportunities for minority and women's business participation in contracts awarded by all state agencies, separate bodies corporate and politic, and state educational institutions."

The Division works with the Governor's Commission on Minority and Women's Business Enterprise Development to establish annual goals for the use of minority and women's business enterprises. These goals are to be derived from a statistical analysis of utilization study of state contracts that are required to be updated every five (5) years. Inclusion of a contractor's utilization of a minority or women's business in the contract itself is a tool used by the M/WBE division ensure compliance with 25 IAC 5.

## **INDEPENDENT CONTRACTOR DETERMINATION**

It is your responsibility to ensure that all Contractors and employees are in a status that reflects the appropriate classification. Personal Service contracts that may create or appear to create an employment relationship under IRS guidelines cause grave tax consequences for the State and potential inequities to the individuals providing the services. Any decision by IDOA to deny a contract due to a decision that an employee status would be created is final. If your contract appears to contain several of the indicators which appear under the employee section below, you may wish to contact an IDOA representative for guidance. Use this as a guide to ensure your agency's compliance. Your agency may be required to analyze in writing the service sought in relation to the IRS factors. If so, the agency must retain the analysis and keep it in the particular contract file for audit purposes.

### **Employee**

- Receives instructions about when, where and how work is to be performed.
- Trained by an experienced employee. Required to take training courses. Must attend meetings.
- Services of the individual are merged into the business. Success, continuation of business depends upon these services.
- Services must be rendered personally, not able to engage others to do the work.
- Hires, supervises and pays workers at the direction of the employer (acts as representative).
- The individual continues to work for the same person year after year.
- The employer sets the hours and days.
- Must devote full-time to the business of the employer. Restricts him or her from doing other gainful work.
- Implies that the employer has control, is physically within the employer's direction and supervision.
- Performs services in the order or sequence set by the employer.
- Required to submit regular oral or written reports to the employer.
- Paid by the employer in regular amounts at stated intervals.
- The employer pays the person's business and/or travel expenses.
- Employer furnishes tools, materials, etc.
- Little or no investment; depends on the employer for facilities and equipment necessary for the work.

### **Independent Contractor**

- Does the job his or her own way without any kind of instructions.
- Uses his or her own methods and receives no training from the purchaser.
- Success and continuation of business aren't dependent on his or her services.
- Contractor able to assign one of his or her assistants to do the job.
- Hires, supervises, and pays other workers and is responsible for the results.
- Hired for one job; no continuous relationship. May or may not be used again at a later date.
- Is master of his or her own time.
- Free to work when and for whom he or she chooses.
- Works off employer's premises uses own office, desk, and telephone.
- Concerned about the end result; sets his or her own sequence as to how that is accomplished.
- Submits no reports.
- Paid a flat amount for the job.
- Is responsible for his or her own expenses. They are not reimbursed for these costs.
- Furnishes his or her own tools.
- Has a real, essential and adequate investment.

- Cannot realize a profit or loss; is basically paid for services rendered.
- Usually works for one employer.
- Does not make his or her services available to the public except through the company for which he or she works.
- Can be discharged at any time.
- Can end his or her relationship with employer at any time.
- Can realize a profit or suffer a loss as a result of his or her service.
- Works for a number of persons or firms at the same time.
- Has own office and assistants. Holds business license, listed in business directories or maintains business telephone. Advertises in newspaper.
- Cannot be fired so long as he or she produces a result that meets contract specifications.
- Is legally responsible for satisfactorily completing a specific job.

### **MEMORANDUM OF UNDERSTANDING (MOUs)**

MOUs are used to memorialize agreements between state agencies, as defined in IC 4-13-1-1(b):

"state agency" means an authority, board, branch, commission, committee, department, division, or other instrumentality of the executive, including the administrative, department of state government. The term "state agency" does not include the judicial or legislative departments of state government, nor does that term include a state educational institution as defined in IC 20-12-0.5-1.

A MOU typically documents an arrangement under which two agencies share a responsibility, or where one agency agrees to perform duties on behalf of the other (where the duties could be within the statutory authority of either agency). The subject matter of a MOU may or may not provide for the transfer of funds between or among agencies. As a general rule, MOUs do not need to be routed through the approval process, and IDOA, Budget and the OAG do not need to be involved. However, there are situations when an agreement between two state agencies requires a formal contract. If an agency has received federal funds and the federal funding source requires a formal contract before the receiving agency can disburse the funds to other state agencies, a contract will be necessary. But any formal contract used between state agencies should be modified to delete clauses inappropriate for such a situation, e.g. indemnification. One state agency will not, in actuality, indemnify another.

If any activity included in a MOU requires the inclusion of a party other than a state agency, a standard contract will be necessary and must be routed through the signatory process.

### **IS IT A CONTRACT, OR IS IT A GRANT?**

The terms "contract" and "grant" are often used interchangeably, and this misuse results in operational inconsistencies, confusion, inefficiency and waste. The confusion stems from the fact that a contract and a grant contain the same essential elements: competent parties, lawful subject matter, sufficient consideration and consent of minds. However, contracts create "state procurement relationships" and grants create "state assistance relationships." IDOA frowns upon State agencies attempting to avoid the competitive procurement process necessary for a contract by inappropriately framing a contract as a grant.



A procurement contract should be used whenever the agency wishes to buy, lease, or exchange property or services for the direct benefit of the State agency. This is the standard buyer-seller relationship. Also, when a State agency's principal purpose is to acquire an intermediary's services, which ultimately may or may not be delivered to an authorized recipient, then a contract is required. When the term "competitive procurement" (i.e. the use of Request for Proposals (RFPs)) is used, it refers to contracting for goods and services under a sealed bid or competitive negotiation procedure, and does not usually include grant proposals. For example, when an agency hires a private entity to perform a function or a duty which the state agency otherwise would perform itself, a procurement contract is necessary. Contracts contain clearly defined deliverables (i.e. what you are purchasing) that tie the duties of the contractor to payment.

On the other hand, when the relationship established is for the transfer of money, property, services or anything of value to the recipient to accomplish a public purpose of support or stimulation, and the State agency's role is passive or no state agency involvement is anticipated during the performance of the activity, then a grant award is created. The purpose of a grant is to benefit some identified segment of the public, rather than the State agency, and the authorization to expend public funds typically comes from the legislative body.

The state agency in essence acts as a patron of the grantee. As a grantor, the state agency's purpose is only to assist an intermediary in providing goods or services to an authorized recipient. A grantee is normally free to choose for itself the best means to implement the grant purpose, subject only to the applicable statutes and the terms of the grant agreement. The State agency is typically responsible for setting strict criteria to ensure upfront that the grant recipient is qualified and competent; not infrequently, these criteria are set out in general terms in the enabling legislation.

Grants may require the Grantee to do the following: comply with various record-keeping requirements; abide by certain requirements regarding the purchase and ownership of equipment; submit budgets concerning cost allocation, cost sharing, the retention of consultants, travel expenses and the treatment of certain income earned as a result of the grant; obtain Grantor's written approval before making significant changes; comply with various federal statutes; and make progress reports and final reports to the Grantor.

As such, a Grantor may evaluate the progress of a Grantee by review of technical or fiscal reports or by site visits, to determine that performance is consistent with objectives, terms and conditions of the award, and a Grantor may require a Grantee to abide by general statutory, regulatory or administrative policy requirements. However, a grant should not contain clearly defined deliverables (i.e. there is no specific purchase like a contract) that tie the duties of the contractor to payment.

An example of when a contract should be used and when a grant should be used: A state agency is mandated by statute to administer a program in which Federal funds are passed through to local entities for the provision of day care to disadvantaged mothers. If the state agency wishes to administer that program with its own staff, the document used to pass through the funds to the actual day care providers would be a grant agreement. If the state agency wishes to agree with a company to assist in the administration of that program, an express duty of the state agency itself, a contract would be required.

The following form is a convenient checklist the federal government has developed to be used for federal pass-through grants to subrecipients. It should be consulted and used whenever necessary.

# SCX-17: SUBRECIPIENT AND VENDOR DETERMINATION FORM

Entity\_\_\_\_\_ Financial Statement Date\_\_\_\_\_

Completed by\_\_\_\_\_ Date\_\_\_\_\_

Subrecipient/Vendor\_\_\_\_\_

Instruction: An auditee may be a recipient, a subrecipient, and/or a vendor. This form is designed to help determine whether an organization receiving federal awards from a pass-through agency should be considered a subrecipient or a vendor for single or program-specific audit purposes. It does not apply for-profit subrecipients.

It is not expected that all of the characteristics will be present and judgments should be used, along with the help of the pass-through entity and/or the cognizant agency, in determining whether an entity is a subrecipient or vendor. There may be unusual circumstances or expectations to the listed characteristics. In making the determination, the substance of the relationship is more important than the form of the agreement.

You should answer all questions for both of the organizations. Each question should be answered either "yes" (Y) or "no" (N). A "yes" answer is indicative of the type of relationship being reviewed. Space is provided for a concise comment if needed. After completing the questionnaire document your conclusion in Part 3.

Section references (Sec.) throughout the form are in the 1997 OMB Circular A-133 unless otherwise noted.

**Part 1 – Subrecipient.** (The following questions relate to characteristics of an award that are indicative of a subrecipient relationship.)

	Y	N	COMMENTS
1. Does the entity receiving the funds from the pass-through entity determine who is eligible to receive the Assistance? (Sec. 210(b)(1))	_____	_____	
2. Does the contract or agreement include performance requirements that are measured against whether the objectives of the federal program are met? (Sec. 210(b)(2))	_____	_____	
3. Does the entity that receives the funds from the pass-through entity have programmatic decision-making responsibility? (Sec.210(b)(3))	_____	_____	
4. Does the contract or agreement with the entity receiving the funds from the pass-through entity state that the entity is to comply with all applicable federal program compliance requirements? (Sec. 210(b)(4))	_____	_____	
5. Are the federal funds being used to carry out a program of the entity receiving the funds from the pass-through entity as opposed to providing goods or services for a program of the pass-through entity? (Sec. 210(b)(5))	_____	_____	

**Part 2 – Vendor.** (The following questions relate to characterizes of payments that are indicative of a vendor relationship.)

	Y	N	COMMENTS
1. Is the entity providing goods or services within its normal business operations? (Sec. 210(c)(1))	_____	_____	
2. Does the entity provide similar goods or services to many different purchasers? (Sec. 210(c)(2))	_____	_____	
3. Does the entity operate in competitive environment? (Sec. 210(c)(3))	_____	_____	
4. Are the goods or services provided ancillary to the operation of the federal program? (Sec. 210(c)(4))	_____	_____	
5. Is there no requirement in the contract or agreement with the entity receiving the funds (from the pass-through entity) that the entity is to comply with all applicable federal program compliance requirements? (Sec. 210(c)(5))	_____	_____	

**Part 3 – Conclusion**

Based on a preponderance of “yes” answers and discussions with appropriate personnel, this entity has been determined to be a : (check one)

Subrecipient \_\_\_\_\_

Vendor \_\_\_\_\_

Comments: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

## EXECUTIVE DOCUMENT SUMMARY (EDS)

The Executive Document Summary was last revised effective January, 2004. The following information/instructions pertain to that form. The form is available on the Forms Management site at <http://www.in.gov/icpr/webfile/formsdiv/idoa.html>.

All contracts submitted for signature approvals must be accompanied by a fully completed Executive Document Summary (EDS) form, a copy of which follows. It is an essential part of the approval process. It is used by the Indiana Office of Technology (when applicable), IDOA, Budget, the OAG and agency staff to track necessary contract information and to assure appropriate policies are followed. Information from the EDS is entered into KMS.

It is essential that the information on the EDS be accurate. This information will be used in the development of reports such as the annual Professional Services Report. Inaccurate information may reflect poorly on your agency, contribute to inaccurate reporting of contract information, and possibly lead to enhanced scrutiny on State Board of Accounts audits.

The EDS is not part of the legally binding contract, so not rely on box 37 of the EDS sheet alone to describe the contractor's duties. Those duties need to be described fully within the contract itself. All too frequently a contract is rejected (particularly amendments) because the agency has explained the duties on the EDS sheet, but has failed to include them in the amendment.

### Instructions for the EDS Form

Instructions for completing the EDS are included on the back of the EDS form. **READ THE INSTRUCTIONS ON THE BACK OF THE FORM BEFORE FILLING IT OUT.** The following is a more detailed description of the information that should be placed in the boxes on the EDS.

**BOX #1:** EDS Number. Each EDS number must begin with the agency Automated Purchasing System (APS) number followed by the last digit of the fiscal year and ending with an agency assigned contract number. The APS number is the same number used by your agency and/or division on requisitions and purchase orders, and some agencies have several APS numbers assigned. *For example:* the APS number for IDOA is C 39. The fiscal year is '05. IDOA uses straight consecutive numbers on its EDS sheets. The next IDOA contract EDS # will be C39-05-1235.

**THE EDS# FOR AMENDMENTS AND RENEWALS MUST BE THE SAME EDS NUMBER THAT WAS USED ON THE ORIGINAL CONTRACT.**

**BOX #3:** Place a mark next to the type of document being submitted for approval. If the document does not fit one of the given descriptions, mark "Other" and specify the type of document. For example, if you have a Contract for Procured Services with an Addendum, you will check "Contract for Procured Services" and check "Other" and fill in the blank with "Addendum".

**BOXES #4 & 5:** If you don't know the account name and number, check with your Budget analyst.

**BOX # 6:** Enter the dollar amount to be expended as a result of this contract/amendment/renewal.

**BOX #7:** On original agreements, this figure will be the same amount as shown in BOX #6. On amendments and renewals, it will be the total of the original agreement plus the amount being added by the amendment / renewal.

**BOXES # 8 and #9:** These boxes are used ONLY when the contractor is paying the State. Enter the total dollar value to be collected under the agreement in BOX 8. BOX 9 is used for amendments, and will be the total of the original amount plus (or minus) the amount of the amendment or renewal.

**BOX #10:** Enter the amount to be spent or collected during each fiscal year of the agreement. The State's fiscal year runs from July 1 through June 30. Fiscal year '06 runs from July 1, 2005 through June 30, 2006.

**BOXES #11 & #12:** Self-explanatory

**BOX #13:** Place a mark next to the type of source selection used to obtain the Contractor/Grantee. If a RFP was used, indicate the RFP number. It is the expectation of IDOA that all agreements of \$75,000 and above will be solicited through a formal process. **If a "Special Procurement" was used, include a copy of the authorization letter.** (See IC 5-22-10 for further information.)

**BOXES #14 and 16** are self explanatory.

**BOX #15:** Use this only if you are attaching a requisition.

**BOXES 17, 18 and 19:** This information will be used by approving agencies to contact the agency concerning the contract and should contain the name of a person familiar with the need for, and purpose of, the contract. This might be a program person.

**BOXES 20, 21, and 22:** This is the information we will use to contact someone to pick up the document when it has been approved (or rejected).

**BOX #23** must contain the Vendor's Taxpayer Identification Number. If the Vendor is an individual, they will use their social security number. Because the EDS sheet is a public document, include only the last 4 digits of the social security number (*i.e.*, "xxx-xx-1234").

**BOX #24:** If the Vendor is a corporation, limited liability company, etc., you **must** include the corporate designation (*i.e.*, "Inc." "Co." "LLC"). This same corporate designation must appear on the first page of the contract and on the signature page.

**BOXES 25 – 26** are self-explanatory.

**BOX #28:** If the Contractor/Grantee is other than an individual or a partnership, it must be registered with the Secretary of State's Office to do business with or in the State of Indiana. Confirm if necessary, by checking Secretary of State's website at [https://secure.in.gov/sos/bus\\_service/online\\_corps/name\\_search.aspx](https://secure.in.gov/sos/bus_service/online_corps/name_search.aspx) . You must mark yes, no or place and NA (not applicable) in the space provided.

**BOXES #29 and 31** should include an indication as to whether there is minority or women's business involvement in the contract.

**BOXES #30 and 32** should list the percentage of the minority and women's business participation.

**BOXES #33 & #34:** Self-explanatory

**BOX #35:** IC 4-23-16-8 requires IOT approval on agreements for computer equipment/software over a certain dollar value.

**BOX #36:** Provide the statutory cite that authorizes your agency to enter into this contract or grant.

**BOX #37:** Describe the work to be accomplished by the Contractor/Grantee. Also, include a brief reason why it is in the best interest of the State to expend the funds. **Do NOT use the explanation provided in this Box as a substitute for a description of the services to be provided in the contract document. This is a frequent problem in amendments.**

**BOX #38:** Describe how/why the Contractor/Grantee was chosen. If a RFP was used, merely make reference to box #13. It is the expectation of IDOA that all agreements of \$75,000 and above will be solicited through a formal process. But for all contracts, if no formal process was used to select the recipient then you **MUST** explain how they were chosen and how you determined their price to be reasonable. (See page 19 for further information.)

**BOX #39:** If the document is being placed into the signature cycle 30 days after the date indicated in box #11 you must explain why.

**BOXES # 40 and # 41:** The agency fiscal officer must sign and date in these boxes. Boxes # 42 – # 47 are for the use of the approving agencies.



# EXECUTIVE DOCUMENT SUMMARY

State Form 41221 (R9/1-04)

Instructions for completing the EDS and the Contract process.

1. Please read the guidelines on the back of this form.
2. Please type all information.
3. Check all boxes that apply.
4. For amendments / renewals, attach original contract.
5. Attach additional pages if necessary.

1. EDS Number:		2. Date prepared:	
<b>3. CONTRACTS &amp; LEASES</b>			
<input type="checkbox"/> Professional/Personal Services <input type="checkbox"/> Contract for Procured Services <input type="checkbox"/> Grant <input type="checkbox"/> Maintenance <input type="checkbox"/> Lease <input type="checkbox"/> License Agreement <input type="checkbox"/> Attorney <input type="checkbox"/> Amendment# _____ <input type="checkbox"/> MOU <input type="checkbox"/> Renewal # _____ <input type="checkbox"/> OPA <input type="checkbox"/> Other _____			
<b>FISCAL INFORMATION</b>			
4. Account Number:		5. Account Name:	
6. Total amount this action:		7. New contract total:	
8. Revenue generated this action:		9. Revenue generated total contract:	
10. New total amount for each fiscal year: Year _____ \$ _____ Year _____ \$ _____			
<b>TIME PERIOD COVERED IN THIS EDS</b>			
11. From (month, day, year):		12. To (month, day, year):	
13. Method of source selection: <input type="checkbox"/> Negotiated <input type="checkbox"/> Bid/Quotation <input type="checkbox"/> Emergency <input type="checkbox"/> Special Procurement <input type="checkbox"/> RFP # _____ <input type="checkbox"/> Other (specify) _____			
35. Will the attached document involve data processing or telecommunications systems(s)? <input type="checkbox"/> Yes: ITOC or Delegate has signed off on contract			
36. Statutory Authority (Cite applicable Indiana or Federal Codes):			
37. Description of work and justification for spending money. (Please give a brief description of the scope of work included in this agreement.) N			
38. Justification of vendor selection and determination of price reasonableness:			
39. If this contract is submitted late, please explain why: (Required if more than 30 days late.)			
40. Agency fiscal officer or representative approval		41. Date Approved	
44. Attorney General's Office approval		45. Date Approved	
42. Budget agency approval		43. Date Approved	
46. Agency representative receiving from AG		47. Date Approved	

## AGENCY INFORMATION

14. Name of agency:

15. Requisition Number:

16. Address:

## AGENCY CONTACT INFORMATION

17. Name:

18. Telephone #:

19. E-mail address

## COURIER INFORMATION

20. Name:

21. Telephone #:

22. E-mail address:

## VENDOR INFORMATION

23. Taxpayer Identification Number:

24. Name:

25. Telephone:

26. Address:

27. E-mail address:

28. Is the vendor registered with the Secretary of State? (Out of State Corporations, must be registered) ☐ Yes ☐ No

29. Primary Vendor: MWBE

Minority: ☐ Yes ☐ No

Women: ☐ Yes ☐ No

30. If yes, list the %:

Minority: \_\_\_\_\_%

Women: \_\_\_\_\_%

31. Sub Vendor: M/WBE

Minority: ☐ Yes ☐ No

Women: ☐ Yes ☐ No

32. If yes, list the %:

Minority: \_\_\_\_\_%

Women: \_\_\_\_\_%

33. Is there Renewal Language in the document?  
☐ Yes ☐ No

34. Is there a "Termination for Convenience" clause in the document?  
Yes ☐ No ☐

BOX #	The EDS number is constructed by combining the agency identification number, the fiscal year, and the last section is assigned by your agency as a unique identifier. <b>MUST BE COMPLETED.</b>
1	
2	Enter the date the EDS is being prepared for routing.
3	Place a check mark by the appropriate type of agreement being routed. If the agreement is a renewal or amendment please insert the sequence number ( <i>i.e. renewal #1, amendment #2</i> )
4 & 5	Enter the account number and account name that will fund this agreement.
6	Enter the dollar amount of the agreement being routed.
7	Enter the total dollar amount of the entire agreement ( <i>i.e. original contract amount plus any renewals/amendments.</i> ).
8	<b>THIS ONLY APPLIES TO MONEY BEING RECEIVED BY THE STATE.</b> Enter the amount of money being received by the agency from this agreement.
9	Enter the total dollar amount of money being received by the State for the entire agreement ( <i>i.e. original contract amount plus any renewals/amendments</i> ).
10	This box must be completed if a contract crosses fiscal years. Indicate the amount of funding for each appropriate fiscal year. Example: A contract starting in fiscal year 2001 and being completed in fiscal year 2002 would have 2001 with a dollar amount and 2002 with a dollar amount. Ensure that the dollar amounts listed in this box will be equal to the dollar amount for the entire agreement.
11 & 12	Enter the date the agreement will begin and end. If this date is determined by the date of the last signatory, enter an estimated date. <b>THERE MUST BE DATES ENTERED.</b>
13	Check the method used to select the contractor for this agreement. If a special procurement was used, you must attach an approval letter. If no solicitation occurred for contracts in the amount of \$75,000 and over, you must attach a letter of justification.
14 & 16	Enter name and address of agency requesting contract.
15	Enter a requisition number <b>ONLY</b> if your agency is attaching a requisition to the contract during signature cycle.
17, 18, & 19	Enter the name, telephone number and e-mail address of the individual in your agency to contact with questions about the attached agreement.
20, 21, & 22	Enter the name, telephone number and e-mail address of the individual responsible for routing this agreement.
23	Enter the Federal Employment identification number of the contractor. If the contractor is an individual, this could be a social security number. <b>THIS AREA MUST BE FILLED IN TO PROCESS THE AGREEMENT.</b>
24, 25, 26, & 27	Enter the name, telephone number, address and e-mail address of the contractor involved with the agreement. Enter the information necessary for your agency, only the name is vital for contract processing.
28	If your contractor is a corporation and the address is outside of the State of Indiana, they must be registered with the Secretary of State's office to do business with the State of Indiana. (IC 23-17-26 & IC 23-1-49-1 & IC 5-22-16-4)
29, 30, 31 & 32	Check "NO" unless a minority owns 51% or more of a company. If 51% or more of the company is minority owned, a 100% should be entered in the percentage space. If a sub-contractor is minority owned, the percentage of the dollar amount of the contract performed by the minority sub-contractor should be entered in the percentage space.
33 & 34	Self-explanatory: Check the appropriate answer for each question.
35	Check this box if this agreement must be submitted to ITOC for approval.
36	Cite applicable Indiana or Federal codes that apply to this agreement.
37	Insert a brief description of the work included in the agreement and why the state should spend the money.
38	Enter the manner of source selection. If a formal BAA/RFP were used merely, enter the BAA/RFP number. If no formal process were used, enter how your agency chose the vendor and how you determined the price offered to be reasonable.
39	If your agreement is being placed in the signature cycle more than 30 days after the agreement has started, enter an explanation as to why. ( <i>i.e. start date 7/1/01 put in to signature cycle on 8/5/01</i> )
40 & 41	The agency fiscal officer should initial and date this box.



## GETTING STARTED: THINGS TO CONSIDER *BEFORE* DEVELOPING YOUR CONTRACT

### Personal Services, Professional Services, and Grants

If your contract will be used to obtain Professional Services, Personal Services or fund grants, it will typically be reviewed by the Contract Management Section.

Contracts involving the formalized competitive process (Bids, responses to Requests for Proposals or Requests for Information) are also used to secure personal services, and are covered by separate manuals and instructions prepared by IDOA's Procurement Division. The Procurement Division conducts separate training sessions on these types of contracts. Leases are also covered in separate training sessions.

**Professional Services:** Any type of service that may be legally performed only by an accounting professional, an architectural or engineering professional, an attorney, a health care professional, a veterinarian, or a real estate professional; a person licensed, certified or registered by a board, an expert witness, investigator, or a person empowered to conduct religious services; or any type of firm, company, or corporation which will supply services using the expertise of any of the above mentioned professionals.

**Personal Services:** Any type of service where the Contractor is an individual who performs services of a specialized nature as an Independent Contractor.

IC 5-22-6-1 provide that "the purchasing agency of a governmental body may purchase services using any procedure the governmental body or the purchasing agency of the governmental body considers appropriate." IDOA construes "any procedure the . . . agency considers appropriate" to mean one of those described in IC 5-22: a bid, a proposal, or a special procurement under IC 5-22-10.

Those involved with State contracting should become familiar with the special procurement statute. If you are not obtaining a service under a bid or an RFP, then it must fit one of the categories permitted by IC 5-22-10. Even then, the agency is expected to obtain quotes and maintain documentation of the efforts made to maximize competition. IC 5-22-10 describes the circumstances under which a Special Procurement is permitted:

**IC 5-22-10-1. Purchase without soliciting bids or proposals.** Notwithstanding any other provision of this article, a purchasing agent may make a purchase under this chapter without soliciting bids or proposals.

**IC 5-22-10-2. Competition.** A special purchase must be made with competition as is practicable under the circumstances.

**IC 5-22-10-3. Contract files; record listing all contracts.** A purchasing agent shall maintain the contract records for a special purchase in a separate file.

(b) A purchasing agent shall include in the contract file a written determination of the basis for: (1) the special purchase; and (2) the selection of a particular contractor.

(c) Notwithstanding any other law, a governmental body shall maintain a record listing all contracts made under this chapter for a minimum of five (5) years. The record must contain the following information: (1) Each contractor's name. (2) The amount and type of each contract. (3) A description of the supplies purchased under each contract.

(d) The contract records for a special purchase are subject to annual audit by the state board of accounts.

**IC 5-22-10-4. Emergency conditions.** (a) A purchasing agent may make a special purchase when there exists, under emergency conditions, a threat to public health, welfare, or safety.

(b) The counterterrorism and security council established by IC 10-19-8-1 may make a purchase under this

section to preserve security or act in an emergency as determined by the governor.

**IC 5-22-10-5. Savings to governmental body.** A purchasing agent may make a special purchase when there exists a unique opportunity to obtain supplies or services at a substantial savings to the governmental body.

**IC 5-22-10-6. Auctions.** A purchasing agent may make a special purchase at an auction.

**IC 5-22-10-7. Data processing contract or license agreements.** A purchasing agent may make a special purchase of data processing contracts or license agreements for: (1) software programs; or (2) supplies or services, when only one (1) source meets the using agency's reasonable requirements.

**IC 5-22-10-8. Compatibility of equipment, accessories, or replacement parts.** A purchasing agent may make a special purchase when: (1) the compatibility of equipment, accessories, or replacement parts is a substantial consideration in the purchase; and (2) only one (1) source meets the using agency's reasonable requirements.

**IC 5-22-10-9. Purchasing method impairs functioning of agency.** A purchasing agent may make a special purchase when purchase of the required supplies or services under another purchasing method under this article would seriously impair the functioning of the using agency.

**IC 5-22-10-10. No offer received under other purchasing method.** A purchasing agent may make a special purchase when the purchasing agency has solicited for a purchase under another purchasing method described in this article and has not received a responsive offer.

**IC 5-22-10-11. Evaluation of supplies or system containing supplies.**

Sec. 11. A purchasing agent may make a special purchase for the evaluation of supplies or a system containing supplies for any of the following reasons: (1) To obtain: (A) functional information; or (B) comparative data. (2) For a purpose that in the judgment of the purchasing agent may advance the long term competitive position of the governmental body.

**IC 5-22-10-12. Governmental discount available.** A purchasing agent may make a special purchase when the market structure is based on price but the governmental body is able to receive a dollar or percentage discount of the established price.

**IC 5-22-10-13. Single source for supply; award of contract.** Subject to sections 14 and 15, a purchasing agent may award a contract for a supply when there is only one (1) source for the supply and the purchasing agent determines in writing that there is only one (1) source for the supply.

**IC 5-22-10-14. General Services Administration price.** A purchasing agent may make a purchase from a person when the purchasing agent determines in writing that: (1) supplies can be purchased from the person or the person's authorized representative at prices equal to or less than the prices stipulated in current federal supply service schedules established by the federal General Services Administration; and (2) it is advantageous to the governmental body's interest in efficiency and economy.

**IC 5-22-10-15. Purchase from person who has contract with federal agency.** (a) A purchasing agent may purchase supplies if the purchase is made from a person who has a contract with a federal agency and the person's contract with the federal agency requires the person to make the supplies available to the state or political subdivisions. (b) A purchasing agent for a political subdivision may purchase supplies if the purchase is made from a person who has a contract with a state agency and the person's contract with the state requires the person to make the supplies or services available to political subdivisions, as provided in IC 4-13-1.6 or IC 5-22-17-9.

**IC 5-22-10-16. Acquisition of supplies through transfer from federal government.** (a) A purchasing agent may acquire supplies if the purchasing agent determines that the governmental body can obtain the transfer of the supplies from the federal government under IC 4-13-1.7 at a cost less than would be obtained from purchase of the supplies by soliciting for bids or proposals.

(b) A governmental body may not make a purchase under this section if title to the property will be transferred to the governmental body before a sufficient appropriation to pay the costs of the purchase is appropriated. However, if the supplies will be transferred to the governmental body upon conditional sale or under a lease, a lease with option to purchase, or a contract for the use of the supplies, the governmental body may make the purchase under this section if there are sufficient funds appropriated to pay the consideration required for one (1) year of the agreement.

(c) A purchasing agent who purchases or leases surplus federal materials shall, at the time of the purchase or lease, or immediately thereafter, give public notice in accordance with IC 5-3-1.

**IC 5-22-10-17. Acquisition of supplies through acceptance of gift.** A purchasing agent may acquire supplies by accepting a gift for the purchasing agent's governmental body.

**IC 5-22-10-18. Special purchase of copyrighted material.** A purchasing agent for a state purchasing agency may make a special purchase of copyrighted materials to be used, provided, or distributed by a state agency.

**IC 5-22-10-19. Purchase from public utility following independent appraisal.** A purchasing agent may make a special purchase from a public utility if the purchase or lease price is a negotiated price that considers the results of an independent appraisal that the purchasing agency obtains and an independent appraisal that the public utility obtains.

**IC 5-22-10-20. Purchase of petroleum products by aviation commissioners or airport authority.** (a) This section applies to the purchase of petroleum products by: (1) a board of aviation commissioners under IC 8-22-2; or (2) an airport authority under IC 8-22-3. (b) A purchasing agent may make a special purchase of petroleum products if the petroleum products are for resale to the general public.

If a RFP is not used, IDOA will review the justification provided on the EDS describing how the contract was competitively procured. If a justification is not supplied at this dollar amount, your contract may be rejected. If a contract is negotiated without competition, an explanation must be provided as to:

- Why was this Contractor chosen?
- Did the agency contact other potential Contractors?
- How did the agency arrive at the price?
- Why is the price fair and reasonable under the circumstances?
- Was there an initial government estimate?
- Did formal negotiation proceedings take place?
- Did the agency document its discussions with the Contractor?

If the above information is not provided, the contract will most likely be rejected.

At times it will be necessary to use an out-of-state contractor, but great efforts should be made to keep this to a minimum. If it is necessary to use an out-of-state contractor, a justification should accompany the contract.



## Contract Development

The following pages include Boilerplate clauses for **Professional/Personal Service Contracts**. The use of a good agency or division Boilerplate that meets your contracting needs is a great management tool and time-saver. Such an agency or division boilerplate should be based on these standard boilerplate clauses. Required clauses must be included. All other standard clauses should be included where, but only where, appropriate.

### Professional/Personal Service Contract Boilerplate

#### Helpful Reminders

*The following reminders are offered to help avoid having contracts returned unsigned during the review process. This is not an exhaustive listing but rather a listing of those items that occur frequently.*

Ask IDOA in advance and in writing for approval of special procurements, particularly if you are relying on a sole source under IC 5-22-10-13.

If the Contractor/Grantee is not an individual, be sure to include the business entity designation that appears in the Secretary of State's listing ("Inc.", "Corp.", "LLC", "LP", etc.) both in the first paragraph of the contract, on the signature page, and on the EDS sheet.

Indiana firms / universities / individuals must be sought to fill the contractual needs of state agencies. If you contract with other than an Indiana entity, you will need to explain how you determined that there was no Indiana entity that could fill your needs. Always attach a completed Indiana Economic Impact Statement.

Non-Collusion is the final clause before the signature page for all agreements including renewals and amendments.

The signature page of an agreement should be placed after the contract language and before attachments/exhibits. The signature page must be flagged for easy identification by the approving agencies.

Attachments/exhibits attached to a contract must be incorporated by reference in the body of the contract and must be labeled. No extraneous items should be attached to a contract.

If you are citing an Executive Order, or a somewhat more obscure legal authority that is not Indiana Code or Administrative Code, please consider attaching it to your contract. This will help ensure the speed and efficiency needed for approval.

Mutual Termination for Convenience Clauses are unacceptable and will result in a rejection of your contract or grant.

The use of Executive Letters to change a contract is unacceptable. All changes to a contract must be by mutual agreement and by amendment and signed by all parties.

When changes/corrections are made in an agreement after signatures have been affixed, the changes must be initialed and dated by both the Contractor and the agency.

Include all optional clauses that you believe will best protect your agency. Do not include clauses which are not appropriate/useful (i.e. using a Key Person clause if there is no key person to the agreement, using order of precedence when there are no other documents to the agreement, etc.).

If using clauses that require the insertion of information to make them complete (RFP #\_\_\_\_, payment shall be sent to \_\_\_\_\_) insert the needed information or remove the clause.

In contracts with an individual, an issue arises as to whether that individual is a true independent contractor or an employee. So, it is a good idea to include a written analysis of the service in relation to the IRS guidelines. This should be placed behind the EDS, It will help move the contract along.

Make sure all dates are consistent in a document. Fiscal year does not automatically set contract dates.

The federal government frequently requires certain boilerplate in contracts where the receipt of federal funds is involved. The required boilerplate varies with the source of the funds. This Manual does not attempt to address this type of boilerplate. If your contract will involve federal funds, check with your agency legal section or program management to make sure all necessary clauses are included.

Remove instructional language when using Boilerplate clauses.

**PROFESSIONAL/PERSONAL SERVICES CONTRACT**  
**EDS# \_\_\_\_\_**

This Contract ("this Contract"), entered into by and between \_\_\_\_\_ (the "State") and \_\_\_\_\_ (the "Contractor"), is executed pursuant to the terms and conditions set forth herein. In consideration of those mutual undertakings and covenants, the parties agree as follows:

**1. Duties of Contractor.**

The duties of the Contractor should outline the exact, detailed services to be performed. Detailing those services ensures that your agency and the Contractor understand exactly what should be provided and lessens the chances that misunderstandings will arise. If the duties of the Contractor have already been set out in a Statement of Work or other separate document, you may fulfill the requirements of this clause by making a short descriptive statement about the duties to be performed then reference that separate document as an exhibit. **ALL ATTACHMENTS / EXHIBITS MUST BE SPECIFICALLY INCORPORATED BY REFERENCE AND PROPERLY LABELED.**

The Contractor shall provide the following services relative to this Contract:

\_\_\_\_\_

**2. Consideration**

Consideration should be stated as a definite amount at a certain rate with a ceiling limitation (per hour, per deliverable, per day, etc.). IDOA requires a not-to-exceed figure on total payments when a rate system is used. As in Clause 1 above, attaching an exhibit may be advisable where the system of consideration involves a number of deliverables and is sufficiently complex to make it advisable to do so. You should still state the not-to-exceed amount in this clause. **THIS SHOULD BE THE SECOND CLAUSE OF THE CONTRACT.**

The Contractor will be paid at the rate of \_\_\_\_\_ for performing the duties set forth above. Total remuneration under this Contract shall not exceed \_\_\_\_\_.

**3. Term**

Term should clearly state the duration of the Contract either by giving a specific beginning and ending date, (month, day and year) OR a duration that begins after the date of the last State signatory. There is no statutory term limit on service contracts. However, as a matter of policy, we retain a 4-year limit, but are willing to discuss longer terms on a case by case basis. **THIS SHOULD BE THE THIRD CLAUSE OF THE CONTRACT.**

This Contract shall be effective for a period of \_\_\_\_\_. It shall commence on \_\_\_\_\_ and shall remain in effect through \_\_\_\_\_.

**THE FOLLOWING PARAGRAPHS 4 THROUGH 47 ARE DEFINED BY IDOA AS STATE BOILERPLATE CLAUSES. STATE BOILERPLATE CLAUSES SHALL REMAIN UNALTERED AND IN THEIR STANDARD FORM, UNLESS ANY CHANGES OR ALTERATIONS ARE DOCUMENTED AS REQUIRED UNDER PARAGRAPH 47, "BOILERPLATE AFFIRMATION CLAUSE".**

#### 4. Access to Records

The Contractor and its subcontractors, if any, shall maintain all books, documents, papers, accounting records, and other evidence pertaining to all costs incurred under this Contract. They shall make such materials available at their respective offices at all reasonable times during this Contract, and for three (3) years from the date of final payment under this Contract, for inspection by the State or its authorized designees. Copies shall be furnished at no cost to the State if requested.

**5. Assignment; Successors.** The Contractor binds its successors and assignees to all the terms and conditions of this Contract. The Contractor shall not assign or subcontract the whole or any part of this Contract without the State's prior written consent. The Contractor may assign its right to receive payments to such third parties as the Contractor may desire without the prior written consent of the State, provided that the Contractor gives written notice (including evidence of such assignment) to the State thirty (30) days in advance of any payment so assigned. The assignment shall cover all unpaid amounts under this Contract and shall not be made to more than one party.

**6. Audits.** The Contractor acknowledges that it may be required to submit to an audit of funds paid through this Contract. Any such audit shall be conducted in accordance with IC 5-11-1, et. seq. and audit guidelines specified by the State.

The following clause can be used as an alternative if Federal funds are involved.
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Following the expiration of this Contract, the Contractor shall arrange for a financial and compliance audit of funds provided by State pursuant to this Contract. Such audit is to be conducted by an independent public or certified public accountant (or as applicable, the Indiana State Board of Accounts), and performed in accordance with Indiana State Board of Accounts publication entitled "Guidelines for Financial Examination of Entities Receiving Assistance from Governmental Sources," and applicable provisions of the Office of Management and Budget Circulars A-133 (Audits of Institutions of Higher Education and Other Non-Profit Organizations). The Contractor is responsible for ensuring that the audit and any management letters are completed and forwarded to the State in accordance with the terms of this Contract. Audits conducted pursuant to this paragraph must be submitted no later than six (6) months following the close of the Contractor's fiscal year. Contractor agrees to provide the Indiana State Board of Accounts and the State an original of all financial and compliance audits. The audit shall be an audit of the actual entity, or distinct portion thereof that is the Contractor, and not of a parent, member, or subsidiary corporation of the Contractor, except to the extent such an expanded audit may be determined by the Indiana State Auditor or the State to be in the best interests of the State. The audit shall include a statement from the Auditor that the Auditor has reviewed this Contract and that the Contractor is not out of compliance with the financial aspects of this Contract.

**7. Authority to Bind Contractor.** The signatory for the Contractor represents that he/she has been duly authorized to execute this Contract on behalf of the Contractor and has obtained all necessary or applicable approvals to make this Contract fully binding upon the Contractor when his/her signature is affixed, and certifies that this Contract is not subject to further acceptance by the Contractor when accepted by the State.

#### 8. Changes in Work.

This provision can be customized to meet your agency's contracting needs.
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The Contractor shall not commence any additional work or change the scope of the work until authorized in writing by the State. No claim for additional compensation shall be made in the absence of a prior written approval executed by all signatories hereto.

## **9. Compliance with Laws**

A. The Contractor shall comply with all applicable federal, state and local laws, rules, regulations and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment of any state or federal statute or the promulgation of rules or regulations thereunder after execution of this Contract shall be reviewed by the State and the Contractor to determine whether the provisions of this Contract require formal modification.

B. The Contractor and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State as set forth in IC § 4-2-6 *et seq.*, IC § 4-2-7, *et. seq.*, the regulations promulgated thereunder, and Executive Order 04-08, dated April 27, 2004. If the Contractor is not familiar with these ethical requirements, the Contractor should refer any questions to the Indiana State Ethics Commission, or visit the Indiana State Ethics Commission website at <http://www.in.gov/ethics/>. If the Contractor or its agents violate any applicable ethical standards, the State may, in its sole discretion, terminate this Contract immediately upon notice to the Contractor. In addition, the Contractor may be subject to penalties under IC §§ 4-2-6 and 4-2-7.

C. The Contractor certifies by entering into this Contract that neither it nor its principal(s) is presently in arrears in payment of taxes, permit fees or other statutory, regulatory or judicially required payments to the State. The Contractor agrees that any payments currently due to the State may be withheld from payments due to the Contractor. Additionally, further work or payments may be withheld, delayed, or denied and/or this Contract suspended until the Contractor is current in its payments and has submitted proof of such payment to the State.

D. The Contractor warrants that it has no current, pending or outstanding criminal, civil, or enforcement actions initiated by the State, and agrees that it will immediately notify the State of any such actions. During the term of such actions, the Contractor agrees that the State may delay, withhold, or deny work under any supplement, amendment, change order or other contractual device issued pursuant to this Contract.

E. If a valid dispute exists as to the Contractor's liability or guilt in any action initiated by the State or its agencies, and the State decides to delay, withhold, or deny work to the Contractor, the Contractor may request that it be allowed to continue, or receive work, without delay. The Contractor must submit, in writing, a request for review to the Indiana Department of Administration (IDOA) following the procedures for disputes outlined herein. A determination by IDOA shall be binding on the parties.

F. Any payments that the State may delay, withhold, deny, or apply under this section shall not be subject to penalty or interest under IC § 5-17-5.

G. The Contractor warrants that the Contractor and its subcontractors, if any, shall obtain and maintain all required permits, licenses, registrations, and approvals, as well as comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities for the State. Failure to do so may be deemed a material breach of this Contract and grounds for immediate termination and denial of further work with the State.

H. The Contractor affirms that, if it is an entity described in IC Title 23, it is properly registered and owes no outstanding reports to the Indiana Secretary of State.

I. As required by IC 5-22-3-7:

(1) the Contractor and any principals of the Contractor certify that (A) the Contractor, except for de minimis and nonsystematic violations, has not violated the terms of (i) IC 24-4.7 [Telephone Solicitation Of Consumers], (ii) IC 24-5-12 [Telephone Solicitations] , or (iii) IC 24-5-14 [Regulation of Automatic Dialing Machines] in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and (B) the Contractor will not violate the terms of IC 24-4.7 for the duration of the Contract, even if IC 24-4.7 is preempted by federal law.

(2) The Contractor and any principals of the Contractor certify that an affiliate or principal of the Contractor and any agent acting on behalf of the Contractor or on behalf of an affiliate or principal of the Contractor (A) except for de minimis and nonsystematic violations, has not violated the terms of IC 24-4.7 in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and (B) will not violate the terms of IC 24-4.7 for the duration of the Contract, even if IC 24-4.7 is preempted by federal law.

**10. Condition of Payment.** All services provided by the Contractor under this Contract must be performed to the State's reasonable satisfaction, as determined at the discretion of the undersigned State representative and in accordance with all applicable federal, state, local laws, ordinances, rules and regulations. The State shall not be required to pay for work found to be unsatisfactory, inconsistent with this Contract or performed in violation of and federal, state or local statute, ordinance, rule or regulation.

**11. Confidentiality of State Information.** The Contractor understands and agrees that data, materials, and information disclosed to the Contractor may contain confidential and protected information. The Contractor covenants that data, material and information gathered, based upon or disclosed to the Contractor for the purpose of this Contract, will not be disclosed to or discussed with third parties without the prior written consent of the State.

**12. Conflict of Interest.**

You **MUST** have this clause. If you are using federal dollars and federal language is required, we will accept it in place of the following language.

A. As used in this section:

"Immediate family" means the spouse and the unemancipated children of an individual.

"Interested party," means:

1. The individual executing this Contract;
2. An individual who has an interest of three percent (3%) or more of the Contractor, if the Contractor is not an individual; or
3. Any member of the immediate family of an individual specified under subdivision 1 or 2.

"Department" means the Indiana Department of Administration.

"Commission" means the State Ethics Commission.

B. The Department may cancel this Contract without recourse by the Contractor if any interested party is an employee of the State.

C. The Department will not exercise its right of cancellation under section B, above, if the Contractor gives the Department an opinion by the Commission indicating that the existence of this Contract and the employment by the State of the interested party does not violate any statute or rule relating to

ethical conduct of State employees. The Department may take action, including cancellation of this Contract, consistent with an opinion of the Commission obtained under this section.

- D. The Contractor has an affirmative obligation under this Contract to disclose to the Department when an interested party is or becomes an employee of the State. The obligation under this section extends only to those facts that the Contractor knows or reasonably could know.

### 13. Continuity of Services

This clause is vital in certain types of contracts, particularly those involving the administration of essential programs. But often, inclusion of this clause is unnecessary and confusing to the contractor. Do not hesitate to delete it when its inclusion is inappropriate.

- A. The Contractor recognizes that the service(s) to be performed under this Contract are vital to the State and must be continued without interruption and that, upon Contract expiration, a successor, either the State or another contractor, may continue them. The Contractor agrees to:
1. Furnish phase-in training, and
  2. Exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.
- B. The Contractor shall, upon the State's written notice:
1. Furnish phase-in, phase-out services for up to sixty (60) days after this Contract expires, and
  2. Negotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase-out services required.

The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and shall be subject to the State's approval. The Contractor shall provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for by this Contract are maintained at the required level of proficiency.

- C. The Contractor shall allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services required by this Contract. The Contractor also shall disclose necessary personnel records and allow the successor to conduct on-site interviews with these employees. If selected employees are agreeable to the change, the Contractor shall release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.
- D. The Contractor shall be reimbursed for all reasonable phase-in, phase-out costs (i.e., costs incurred within the agreed period after contract expiration that result from phase-in, phase-out operations).

#### **14. Debarment and Suspension.**

A. The Contractor certifies by entering into this Contract that neither it nor its principals nor any of its subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from entering into this Contract by any federal agency or by any department, agency or political subdivision of the State. The term "principal" for purposes of this Contract means an officer, director, owner, partner, key employee or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Contractor.

B The Contractor certifies that it has verified the state and federal suspension and debarment status for all subcontractors receiving funds under this Contract and shall be solely responsible for any recoupment, penalties or costs that might arise from use of a suspended or debarred subcontractor. The Contractor shall immediately notify the State if any subcontractor becomes debarred or suspended, and shall, at the State's request, take all steps required by the State to terminate its contractual relationship with the subcontractor for work to be performed under this Contract.

**15. Default by State.** If the State, sixty (60) days after receipt of written notice, fails to correct or cure any material breach of this Contract, the Contractor may cancel and terminate this Contract and institute the appropriate measures to collect monies due up to and including the date of termination.

#### **16. Disputes**

This is a very important clause. You should use it with every contract. This gives you and the Contractor an avenue to settle grievances, rather than to terminate the contract. No authority can replace that of the Commissioner of the Indiana Department of Administration. It is sometimes helpful to reinforce to the Contractor that this procedure is merely to assist the State in determining true conflicts from mere misunderstandings, and that the decision of the Commissioner is non-binding.

A. Should any disputes arise with respect to this Contract, the Contractor and the State agree to act immediately to resolve such disputes. Time is of the essence in the resolution of disputes.

B. The Contractor agrees that, the existence of a dispute notwithstanding, it will continue without delay to carry out all its responsibilities under this Contract that are not affected by the dispute. Should the Contractor fail to continue to perform its responsibilities regarding all non-disputed work, without delay, any additional costs incurred by the State or the Contractor as a result of such failure to proceed shall be borne by the Contractor, and the Contractor shall make no claim within ten (10) working days following notification in writing by either party of the existence of a dispute, then the following procedure shall apply:

1. The parties agree to resolve such matters through submission of their dispute to the Commissioner of the Indiana Department of Administration. The Commissioner shall reduce a decision to writing and mail or otherwise furnish a copy thereof to the Contractor and the State within ten (10) working days after presentation of such dispute for action. The Commissioner's decision shall be final and conclusive unless either party mails or otherwise furnishes to the Commissioner, within ten (10) working days after receipt of the Commissioner's decision, a written appeal. Within ten (10) working days of receipt by the Commissioner of a written request for appeal, the decision may be reconsidered. If no reconsideration is provided within ten (10) working days, the parties may mutually agree to submit the dispute to arbitration or mediation for a determination, or otherwise the dispute may be submitted to an Indiana court of competent jurisdiction.

2. The State may withhold payments on disputed items pending resolution of the dispute. The unintentional nonpayment by the State to the Contractor of one or more invoices not in dispute in accordance with the terms of this Contract will not be cause for Contractor to terminate this Contract, and the Contractor may bring suit to collect these amounts without following the disputes procedure contained herein.

## **17. Drug-Free Workplace Certification**

You MUST have this clause. It is required by Executive Order 90-5. Note that it has been modified in 2005 to apply only to Contractor's employees within the State of Indiana.

The Contractor hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. The Contractor will give written notice to the State within ten (10) days after receiving actual notice that the Contractor or an employee of the Contractor in the State of Indiana has been convicted of a criminal drug violation occurring in the workplace. False certification or violation of this certification may result in sanctions including, but not limited to, suspension of contract payments, termination of this Contract and/or debarment of contracting opportunities with the State for up to three (3) years.

In addition to the provisions of the above paragraphs, if the total contract amount set forth in this Contract is in excess of \$25,000.00, the Contractor hereby further agrees that this Contract is expressly subject to the terms, conditions, and representations of the following certification:

This certification is required by Executive Order No. 90-5, April 12, 1990, issued by the Governor of Indiana. No award of a contract shall be made, and no contract, purchase order or agreement, the total amount of which exceeds \$25,000.00, shall be valid, unless and until this certification has been fully executed by the Contractor and made a part of the contract or agreement as part of the contract documents.

The Contractor certifies and agrees that it will provide a drug-free workplace by:

- A. Publishing and providing to all of its employees a statement notifying them that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Contractor's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;
- B. Establishing a drug-free awareness program to inform its employees of (1) the dangers of drug abuse in the workplace; (2) the Contractor's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;
- C. Notifying all employees in the statement required by subparagraph (A) above that as a condition of continued employment, the employee will (1) abide by the terms of the statement; and (2) notify the Contractor of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
- D. Notifying the State in writing within ten (10) days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction;

- E. Within thirty (30) days after receiving notice under subdivision (C)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) taking appropriate personnel action against the employee, up to and including termination; or (2) requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and
- F. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.

**18. Employment Option.** If the State determines that it would be in the State's best interest to hire an employee of the Contractor, the Contractor will release the selected employee from any non-compete agreements that may be in effect. This release will be at no cost to the State or the employee.

**19. Force Majeure.** In the event that either party is unable to perform any of its obligations under this Contract or to enjoy any of its benefits because of natural disaster or decrees of governmental bodies not the fault of the affected party (hereinafter referred to as a "Force Majeure Event"), the party who has been so affected shall immediately give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this Contract shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Contract.

## **20. Funding Cancellation**

This clause is required by IC 5-22-17-5.

When the Director of the Office of Management and Budget makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Contract, this Contract shall be canceled. A determination by the Budget Director that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

## **21. Governing Laws.**

This clause MANDATORY all contracts and is covered by IC 34-13-2-3(d). Many Contractors want to alter the clause to include the laws of the state in which their parent company resides. This is never acceptable.

This Contract shall be construed in accordance with and governed by the laws of the State of Indiana and suit, if any, must be brought in the State of Indiana.

## **22. Indemnification.**

Also called a Hold-Harmless Clause; **NEVER** include a clause that provides that the State will hold harmless or indemnify the other party.

The Contractor agrees to indemnify, defend, and hold harmless the State, its agents, officers, and employees from all claims and suits including court costs, attorney's fees, and other expenses caused by any act or omission of the Contractor and/or its subcontractors, if any, in the performance of this Contract. The State shall **not** provide such indemnification to the Contractor.

## **23. Independent Contractor**

This is a very important clause. Refer to the earlier section in the manual that addresses abuses of this option per IRS rulings.

Both parties hereto, in the performance of this Contract, shall act in an individual capacity and not as agents, employees, partners, joint venturers or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever. Neither party will assume liability for any injury (including death) to any persons, or damage to any property, arising out of the acts or omissions of the agents, employees or subcontractors of the other party.

The Contractor shall be responsible for providing all necessary unemployment and workers' compensation insurance for the Contractor's employees.

## **24. Information Technology Enterprise Architecture Requirements**

Unless there is a waiver approved by the Indiana Office of Technology (IOT), this clause should be used in all contracts having to do with procuring new Information Technology products and services to assure consideration for approval by IOT.

If the Contractor provides any information technology related products or services to the State, the Contractor shall comply with all IOT standards, policies and guidelines, which are online at <http://iot.in.gov/architecture/>. The Contractor specifically agrees that all hardware, software and services provided to or purchased by the State shall be compatible with the principles and goals contained in the electronic and information technology accessibility standards adopted under Section 508 of the Federal Rehabilitation Act of 1973 (29 U.S.C. 794d) and IC 4-13.1-3. Any deviation from these architecture requirements must be approved in writing by IOT in advance. The State may terminate this Contract for default if the Contractor fails to cure a breach of this provision within a reasonable time.

## **25. Insurance**

This clause is not mandatory. However, you may make a business decision that requires insurance provisions. If so, you should use the language provided here.

A. The Contractor shall secure and keep in force during the term of this Contract, the following insurance coverages, covering the Contractor for any and all claims of any nature which may in any manner arise out of or result from this Contract:

1. Commercial general liability, including contractual coverage, and products or completed operations coverage (if applicable), with minimum liability limits of \$700,000 per person and \$5,000,000 per occurrence unless additional coverage is required by the State.
2. Automobile liability with minimum liability limits of \$700,000 per person and \$5,000,000 per occurrence.
3. The Contractor shall provide proof of such insurance coverage by tendering to the undersigned State representative a certificate of insurance prior to the commencement of this Contract and proof of Workers compensation coverage meeting all statutory requirements of IC 22-3-2. In addition, proof

of an “all states endorsement” covering claims occurring outside the State is required if any of the services provided under this Contract involve work outside of Indiana.

B. The Contractor’s insurance coverage must meet the following additional requirements:

1. The insurer must have a certificate of authority issued by the Indiana Department of Insurance.
2. Any deductible or self-insured retention amount or other similar obligation under the insurance policies shall be the sole obligation of the Contractor.
3. The State will be defended, indemnified and held harmless to the full extent of any coverage actually secured by the Contractor in excess of the minimum requirements set forth above. The duty to indemnify the State under this Contract shall not be limited by the insurance required in this Contract.
4. The insurance required in this Contract, through a policy or endorsement(s), shall include a provision that the policy and endorsements may not be canceled or modified without thirty (30) days’ prior written notice to the undersigned State agency.

Failure to provide insurance as required in this Contract may be deemed a material breach of contract entitling the State to immediately terminate this Contract. The Contractor shall furnish a certificate of insurance and all endorsements to the State before the commencement of this Contract.

## **26. Key Person(s)**

This clause should only be included if your agency has identified persons key to the success of the contract. The Key Person should be identified in the Duties section of the contract OR may be included in this section.

- A. If both parties have designated that certain individual(s) are essential to the services offered, the parties agree that should such individual(s) leave their employment during the term of this Contract for whatever reason, the State shall have the right to terminate this Contract upon thirty (30) days prior written notice.
- B. In the event that the Contractor is an individual, that individual shall be considered a key person and, as such, essential to this Contract. Substitution of another for the Contractor shall not be permitted without express written consent of the State.
- C. Nothing in sections A and B, above shall be construed to prevent the Contractor from using the services of others to perform tasks ancillary to those tasks which directly require the expertise of the key person. Examples of such ancillary tasks include secretarial, clerical, and common labor duties. The Contractor shall, at all times, remain responsible for the performance of all necessary tasks, whether performed by a key person or others.

Key person(s) to this Contract is/are \_\_\_\_\_

**27. Licensing Standards.** The Contractor and its employees and subcontractors shall comply with all applicable licensing standards, certification standards, accrediting standards and any other laws, rules or regulations governing services to be provided by the Contractor pursuant to this Contract. The State shall not be required to pay the Contractor for any services performed when the Contractor, its employees or



subcontractors are not in compliance with such applicable standards, laws, rules or regulations. If licensure, certification or accreditation expires or is revoked, or if disciplinary action is taken against the applicable licensure, certification or accreditation, the Contractor shall notify the State immediately and the State, at its option, may immediately terminate this Contract.

**28. Merger & Modification.** This Contract constitutes the entire agreement between the parties. No understandings, agreements, or representations, oral or written, not specified within this Contract will be valid provisions of this Contract. This Contract may not be modified, supplemented or amended, in any manner, except by written agreement signed by all necessary parties.

**29. Minority and Women's Business Enterprises Compliance.** The Contractor agrees to comply fully with the provisions of 25 IAC 5 and any participation plan that may have been submitted to the State.

The following MBE's and WBE's listed on the Minority and Women's Business Enterprises Division directory of certified firms will be participating in this Contract.

<u>MBE/WBE</u>	<u>PHONE</u>	<u>COMPANY NAME</u>	<u>SCOPE OF PRODUCTS and/or SERVICES</u>	<u>UTILIZATION DATE</u>	<u>AMOUNT</u>
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### 30. Nondiscrimination

You MUST have this clause. Please see the following section for contracts using federal funding.
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Pursuant to IC 22-9-1-10 and the Civil Rights Act of 1964, the Contractor and its subcontractors shall not discriminate against any employee or applicant for employment in the performance of this Contract. The Contractor shall not discriminate with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of race, color, religion, sex, disability, national origin or ancestry. Breach of this covenant may be regarded as a material breach of this Contract. The Contractor's execution of this Contract also signifies compliance with applicable federal laws, regulations and executive orders prohibiting discrimination in the provision of services based on race, color, national origin, age, sex, disability or status as a veteran.

If federal funding is involved with the contract, you must include the following stipulated language.
---

The Contractor understands that the State is a recipient of federal funds. Pursuant to that understanding, the Contractor and its subcontractor, if any, agree that if the Contractor employs fifty (50) or more employees and does at least \$50,000.00 worth of business with the State and is not exempt, the Contractor will comply with the affirmative action reporting requirements of 41 CFR 60-1.7. The Contractor shall comply with Section 202 of Executive Order 11246, as amended, 41 CFR 60-250, and 41 CFR 60-741, as amended, which are incorporated herein by specific reference. Breach of this covenant may be regarded as a material breach of this Contract.

**31. Notice to Parties.** Whenever any notice, statement or other communication is required under this Contract, it shall be sent to the following addresses, unless otherwise specifically advised.

A. Notices to the State shall be sent to:

**(Include contact name and/or title, name of agency, specific address.)**

B. Notices to the Contractor shall be sent to:

**(Include contact name and/or title, name of vendor, specific address.)**

C. As required by IC 4-13-2-14.8, payments to the Contractor shall be made via electronic funds transfer in accordance with instructions filed by the Contractor with the Indiana Auditor of State.

### **32. Order of Precedence; Incorporation by Reference.**

We strongly encourage the use of this clause. This clause can be extremely important when a problem arises. Word the clause accordingly, but State-created documents should ALWAYS take precedence over Contractor documents or other material. You can refer to a RFP, a Grant Application, replies to a RFP or Grant Application Request prepared by a Vendor/Grantee, etc. If you include this clause in your contract, PLEASE fill in the information appropriately.

Any inconsistency or ambiguity in this Contract shall be resolved by giving precedence in the following order: (1) This Contract, (2) attachments prepared by the State, (3) RFP#\_\_\_\_\_, (4) Contractor's response to RFP#\_\_\_\_\_, and (5) attachments prepared by the Contractor. All of the foregoing are incorporated fully by reference. All attachments, and all documents referred to in this paragraph are hereby incorporated fully by reference.

**33. Ownership of Documents and Materials.** All documents, records, programs, data, film, tape, articles, memoranda, and other materials not developed or licensed by the Contractor prior to execution of this Contract, but specifically developed under this Contract shall be considered "work for hire" and the Contractor transfers any ownership claim to the State and all such materials will be the property of the State. Use of these materials, other than related to contract performance by the Contractor, without the prior written consent of the State, is prohibited. During the performance of this Contract, the Contractor shall be responsible for any loss of or damage to these materials developed for or supplied by the State and used to develop or assist in the services provided while the materials are in the possession of the Contractor. Any loss or damage thereto shall be restored at the Contractor's expense. Full, immediate and unrestricted access to the work product of the Contractor during the term of this Contract shall be available to the State.

### **34. Payments**

This provision may be modified to stipulate the type of payment -- monthly, progress, per hour etc. Further detail can be added, such as how invoices should be submitted, in triplicate, etc.

All payments shall be made in arrears in conformance with State fiscal policies and procedures and, as required by IC 4-13-2-14.8, by electronic funds transfer to the financial institution designated by the Contractor in writing unless a specific waiver has been obtained from the Indiana Auditor of State. No payments will be made in advance of receipt of the goods or services that are the subject of this Contract except as permitted by IC 4-13-2-20.

**35. Penalties/Interest/Attorney's Fees.** The State will in good faith perform its required obligations hereunder and does not agree to pay any penalties, liquidated damages, interest or attorney's fees, except as permitted by Indiana law, in part, IC 5-17-5, IC 34-54-8, and IC 34-13-1.

Notwithstanding the provisions contained in IC 5-17-5, any liability resulting from the State's failure to make prompt payment shall be based solely on the amount of funding originating from the State and shall not be based on funding from federal or other sources.

### 36. Progress Reports

This provision may be modified to include specific dates or periods that reports are due. Please modify the language in such a way as to be appropriate for your agency.

The Contractor shall submit progress reports to the State upon request. The report shall be oral, unless the State, upon receipt of the oral report, should deem it necessary to have it in written form. The progress reports shall serve the purpose of assuring the State that work is progressing in line with the schedule, and that completion can be reasonably assured on the scheduled date.

### 37. Renewal Option

If there is the potential that your agency will want to renew the Contract, this clause is **REQUIRED**. As a matter of policy we retain a four (4)-year limit on renewals, but are willing to discuss longer terms on a case-by-case basis. If a contract is going to allow for a price increase, the method of determining the increase must be defined in the original contract. **If you do not provide for a price increase in the original contract, you can not increase the price upon renewal but must do a formal amendment instead.**

This Contract may be renewed under the same terms and conditions, subject to the approval of the Commissioner of the Department of Administration and the State Budget Director in compliance with IC 5-22-17-4. The term of the renewed contract may not be longer than the term of the original contract.

Use this language if you **are** allowing for a price increase.

**Use this language if you have pre-negotiated a price increase:**

This Contract may be renewed under the same terms and conditions subject to the approval of the Commissioner of the Department of Administration and the State Budget Director in compliance with IC 5-22-17-4. The term of the renewed contract may not be longer than the term of the original contract. Any subsequent renewal to this Contract may include an increase of up to \_\_\_\_\_ percent at the sole discretion of the State.

**38. Security and Privacy of Health Information.** The Contractor agrees to comply with all requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) in all activities related to this Contract, to maintain compliance throughout the life of this Contract, to operate any systems used to fulfill the requirements of this Contract in full compliance with HIPAA and to take no action which adversely affects the State's HIPAA compliance.

The parties acknowledge that the Department of Health and Human Services has issued the Final Rule, as amended from time to time, on the Standards for Privacy of Individually Identifiable Health Information, as required by HIPAA. To the extent required by the provisions of HIPAA and regulations promulgated thereunder, the Contractor covenants that it will appropriately safeguard Protected Health Information (PHI), as defined by the regulations, which is made available to or obtained by the Contractor in the course of its work under this Contract. The Contractor agrees to comply with applicable requirements of

law relating to PHI with respect to any task or other activity it performs for the State as required by the final regulations.

**39. Severability.** The invalidity of any section, subsection, clause or provision of this Contract shall not affect the validity of the remaining sections, subsections, clauses or provisions of this Contract.

**40. Substantial Performance.** This Contract shall be deemed to be substantially performed only when fully performed according to its terms and conditions and any written amendments or supplements.

**41. Taxes.** The State is exempt from most state and local taxes and many federal taxes. The State will not be responsible for any taxes levied on the Contractor as a result of this Contract.

**42. Termination for Convenience.**

**While not mandatory, inclusion of this clause is highly recommended.**

This Contract may be terminated, in whole or in part, by the State whenever, for any reason, the State determines that such termination is in its best interest. Termination of services shall be effected by delivery to the Contractor of a Termination Notice at least thirty (30) days prior to the termination effective date, specifying the extent to which performance of services under such termination becomes effective. The Contractor shall be compensated for services properly rendered prior to the effective date of termination. The State will not be liable for services performed after the effective date of termination. The Contractor shall be compensated for services herein provided but in no case shall total payment made to the Contractor exceed the original contract price or shall any price increase be allowed on individual line items if canceled only in part prior to the original termination date.

**43. Termination for Default.**

A. With the provision of thirty (30) days notice to the Contractor, the State may terminate this Contract in whole or in part if the Contractor fails to:

1. Correct or cure any breach of this Contract;
2. Deliver the supplies or perform the services within the time specified in this Contract or any extension;
3. Make progress so as to endanger performance of this Contract; or
4. Perform any of the other provisions of this Contract.

B. If the State terminates this Contract in whole or in part, it may acquire, under the terms and in the manner the State considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to the State for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.

C. The State shall pay the contract price for completed supplies delivered and services accepted. The Contractor and the State shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The State may withhold from these amounts any sum the State determines to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders.

D. The rights and remedies of the State in this clause are in addition to any other rights and remedies provided by law or equity or under this Contract.

**44. Travel.** No expenses for travel will be reimbursed unless specifically permitted under the scope of services or consideration provisions. Expenditures made by the Contractor for travel will be reimbursed at the current rate paid by the State and in accordance with the State Travel Policies and Procedures as specified in the current Financial Management Circular. Out-of-state travel requests must be reviewed by the State for availability of funds and for appropriateness per Circular guidelines.

**45. Waiver of Rights.** No right conferred on either party under this Contract shall be deemed waived, and no breach of this Contract excused, unless such waiver is in writing and signed by the party claimed to have waived such right.

**46. Work Standards.** The Contractor shall execute its responsibilities by following and applying at all times the highest professional and technical guidelines and standards. If the State becomes dissatisfied with the work product of or the working relationship with those individuals assigned to work on this Contract, the State may request in writing the replacement of any or all such individuals, and the Contractor shall grant such request

**47. State Boilerplate Affirmation Clause.** I swear or affirm under the penalties of perjury that I have not altered, modified or changed the State's Boilerplate contract clauses (as defined in the February, 2006 IDOA *Professional Services Contract Manual*) in any way except for the following clauses:

---

**THE REMAINDER OF THIS PAGE HAS BEEN LEFT BLANK INTENTIONALLY.**

## Non-Collusion and Acceptance

You **MUST** have this clause in your contract. It is required by IC 5-22-16-6. **THIS SHOULD BE THE FINAL CLAUSE BEFORE THE SIGNATURE PAGE.** All Contracts, Amendments, Renewals, Addendums, Supplements, etc. must include this clause.

The undersigned attests, subject to the penalties for perjury, that he/she is the Contractor, or that he/she is the properly authorized representative, agent, member or officer of the Contractor, that he/she has not, nor has any other member, employee, representative, agent or officer of the Contractor, directly or indirectly, to the best of the undersigned's knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Contract other than that which appears upon the face of this Contract.

**In Witness Whereof**, Contractor and the State have, through their duly authorized representatives, entered into this Contract. The parties, having read and understood the foregoing terms of this Contract, do by their respective signatures dated below hereby agree to the terms thereof.

**(Contractor:)**

(Where Applicable)

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Attested By: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**(State of Indiana Agency):**

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

If an IOT signature is necessary but the signature block is left blank, a statement must be inserted that authority has been delegated to this agency per a letter from IOT dated \*\*\*.

**Indiana Office of Technology**

**Department of Administration**

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
(for)  
Earl A. Goode, Commissioner  
Date: \_\_\_\_\_

**State Budget Agency**

**APPROVED as to Form and Legality:  
Office of the Attorney General**

\_\_\_\_\_  
(for)  
Charles E. Schalliol, Director  
Director  
Date: \_\_\_\_\_

\_\_\_\_\_  
(for)  
Stephen Carter, Attorney General  
Date: \_\_\_\_\_

## EDS CHECK LIST

Before you send your contract through the signature approval process, check your contract against the following list. If all items are completed, your contract should not encounter any problems during the approval process.

	Document properly titled.
	Agency EDS number is complete. Agency automated purchasing system (APS) number - LAST digit from fiscal year – the number assigned by the agency or division.
	Account number/account name from agency fiscal officer.
	Total amount of this EDS action + total amount of the contract prior to this action= new contract total. For original contracts the total amount of this action and the “new” contract total must be the same amount.
	New total amount for each fiscal year: when added together should = new contract total.
	FROM/TO: FULL dates so time can be calculated.
	Name of State Agency/Division /Subdivision. Initials are okay.
	Address: the address to which the contract should be returned.
	Courier is generally the contract coordinator or the person responsible for tracking the progress of the contract. Make sure your Courier knows something about the contract if his/her name is on it! The agency contact should be the person responsible for the development of the Contract.
	Method of Source Selection: If an RFP was used, be sure to indicate the RFP number.
	MUST have the Taxpayer Identification Number of the Contractor to enter the data into the system.
	Description of work: one to two sentences describing the scope of the contract.
	Items requested in box #37 and 38 MUST be provided.
	Approval of agency fiscal officer, verifying that funds are available.
	If your contract is being placed in the signature cycle more than 30 days after the agreement has started, enter an explanation as to why in box #39.
	Dollars match throughout EDS, Contract and all Attachments.
	Dates clearly stated (beginning/end) and match throughout EDS, Contract and all attachments. They are within the limits (4 years).
	All names are consistent throughout the EDS, Contract and all attachments.
	<b>EDS COMPLETE AND INCLUDED WITH CONTRACT AS FACE SHEET</b>

### Contract Checklist

	Terms spelled out, consistent, do not conflict with federal or state law, etc.
	All contract documents are paginated and in order.
	All references in contract correspond with appropriate clauses and attachments.
	Attachments/exhibits are attached following the signature page. All attachments/exhibits are labeled in accordance with the references made in the contract. No attachments/ exhibits have been included that were not referenced within the contract.
	<b>IDOA EITHER RECOMMENDS OR REQUIRES THESE BOILERPLATE CLAUSES</b>
	Conflict of Interest Statement MUST HAVE
	Drug-free workplace Certification MUST HAVE
	Duties of Contractor, Rate of Pay and Terms of Contract MUST HAVE
	Funding Cancellation MUST HAVE
	Non-Collusion Statement MUST HAVE
	Non-Discrimination Clause MUST HAVE
	Boilerplate Affirmation Clause MUST HAVE
	Governing Laws MUST HAVE
	Indemnity (Hold-Harmless Clause) —THE STATE CAN NEVER INDEMNIFY THE CONTRACTOR
	Independent Contractor IMPORTANT
	Travel VERY USEFUL (Must have if travel costs included in contract)
	SIGNATURE PAGE: Contractor and AGENCY Signature
	SIGNATURE PAGE: Remember to get IOT Signature if necessary.
	SIGNATURE PAGE: Earl A. Goode, Commissioner, Indiana Department of Administration
	SIGNATURE PAGE: Charles E. Schalliol, Director, State Budget Agency
	SIGNATURE PAGE: Stephen Carter, Attorney General of Indiana
	CONTRACT COMPLETE WITH ALL NEEDED SIGNATURES



## Grant Development

### Grant Boilerplate

A Grant is an **award of money by the State to a person or entity (the “Grantee”) so that the Grantee can pursue or fulfill a goal or objective of the Grantee.** The State can (and does) place restrictions on how the funds can be used, and require reports, conformance to schedules, etc. A contract should not be characterized as a grant unless there has been some application process where the State selected a Grantee based on certain usage requirements. When the State is the recipient of a grant from another source and will in turn use those funds to obtain services for the State from an outside entity, this would not be marked a grant. It would be a contract for services and solicitation guidelines would apply.

### Reminders:

The following pages include Grant Boilerplate language. Only GRANT-SPECIFIC information is included here. Clauses that are mandatory for grants are included in this section. If there were clauses in the Professional/Personal Service Contract Boilerplate that would further protect your agency, feel free to include them. In any clause “borrowed” from the contract Boilerplate, please be sure to alter language to read “Grantee” rather than “Contractor.”

Remove the instruction language from the clauses before inserting them in your contract.

Certain clauses have been designated as required and must be included in every Grant. This includes an order of precedence clause if you incorporate a grant application into the agreement or if a grant application is used to clarify the expectations of the Grantee.

Please include a completed Executive Document Summary as the face sheet of your Grant.

If your agency prepares federal grants, be sure to include clauses required by your federal granting authority.

## GRANT AGREEMENT

This Grant Agreement, entered into by and between \_\_\_\_\_ (the “State”) and \_\_\_\_\_ (the “Grantee”), is executed pursuant to the terms and conditions set forth herein. In consideration of those mutual undertakings and covenants, the parties agree as follows:

### 1. Purpose of this Grant Agreement.

This clause is specifically for Grants. A grant differs from a contract in that a grant's funds are specifically appropriated for narrowly-defined purposes, and usually may only be awarded to defined 'qualified entities', are subject to ongoing administration by a specific state agency, and subject to repayment to the state if the terms of the Grant are not met by the Grantor. Remember that your Exhibit reference may be different than the one included here. **THIS SHOULD BE THE FIRST CLAUSE OF THE GRANT.**

The purpose of this Grant Agreement is to enable the State to award a grant of \_\_\_\_\_ Dollars and \_\_\_\_\_ Cents (\$XXX,XXX.XX) to the Grantee for eligible costs of the project (the “Project”) or services as described in Exhibits A and B of this Grant Agreement. The funds shall be used exclusively in accordance with the provisions contained in this Grant Agreement and in Indiana Code X-X-X establishing the authority to make this Grant, as well as any rules adopted thereunder.

### 2. Term.

Term should clearly state the duration of the agreement either by giving a specific beginning and ending date, (month, day and year) or a duration that begins after the date of the last State signatory. As a matter of policy we will retain the 4-year limit, but are willing to discuss longer terms on a case-by-case basis. **THIS SHOULD BE THE SECOND CLAUSE OF THE GRANT.**

This Grant Agreement shall be effective for a period of \_\_\_\_\_. It shall commence on \_\_\_\_\_ and shall remain in effect through \_\_\_\_\_.

### 3. Design and Implementation of Project.

This is specifically a clause for Grants. Remember that your Exhibit reference may be different than the one included here.

Should this Grant provide for the development of a special project, rather than routine services to the community. This is specifically a clause for Grants. Remember that your Exhibit reference may be different than the one included here.

The Grantee shall be solely responsible for the proper design and implementation of the Project as described in Exhibit A, attached hereto and incorporated fully herein. The Grantee agrees to complete the Project in accordance with the plans and specifications contained in its application which is on file with the State and is incorporated by reference. Modification of the Project shall require prior written approval of the State.

#### **4. Monitoring Reviews by the State.**

This is specifically a clause for Grants. Remember that your Exhibit reference may be different than the one included here. Customize the statements to meet your agency's needs.

The State may conduct an on-site monitoring review of the Project. Such monitoring review will document the following:

- A. Whether Project activities are consistent with those set forth in Exhibit A, the grant applications, and the terms and conditions of the Grant Agreement.
- B. A complete, detailed analysis of actual state, local and/or private funds expended to date on the Project and conformity with the amounts for each budget line item as set forth in Exhibit B, attached hereto and incorporated herein.
- C. A detailed listing of all Project costs by project budget line item which are accrued yet unpaid, if any.

A written evaluation as to the Grantee's timely progress in project management, financial management and control systems, procurement systems and methods, and performance relative to timely submission of project reports.

#### **5. Payment of Grant Funds by the State.**

This is specifically a clause for Grants. Remember that your Exhibit reference may be different than the one included here. Customize the statements to meet your agency's needs.

The payment of this Grant by the State to the Grantee shall be made in accordance with the following schedule and conditions:

- A. This Grant Agreement must be fully executed.
- B. All the evidentiary materials required by Exhibit \_\_\_\_, attached hereto and incorporated herein, must be submitted to and approved by the State.
- C. Any other grant conditions as specified in Exhibit \_\_\_\_\_ must be met to the State's satisfaction.
- D. The State may require evidence furnished by the Grantee that substantial progress has been made toward completion of the Project prior to making the first payment under this Grant. All payments are subject to the State's determination that the Grantee's performance to date conforms with the Project as approved, notwithstanding any other provision of this Grant Agreement.
- E. Unless authorized by statute and previously agreed, all payments will be made in arrears only upon presentation of approved and signed State of Indiana Claim Vouchers. Such Claim Vouchers must be submitted with the budget expenditure report detailing disbursements of state, local and/or private funds by project budget line items as set forth in Exhibit \_\_\_\_\_.

If advance payment of a portion of the grant funds is permitted by statute, and the State agrees to provide such advance payment, it shall be made only upon submission of a proper claim setting

out the intended purposes of those funds. After such funds have been expended, Grantee shall provide State with a reconciliation of those expenditures.

- F. The Grantee shall submit to the State written progress reports until the completion of the project. These reports shall be submitted on a [weekly/monthly/quarterly] basis. These reports must detail progress made toward the completion of the Project described in Exhibit A.
- G. If this Grant Agreement is terminated by either party prior to the Expiration Date set forth in Paragraph \_\_\_\_ of this Grant Agreement, pursuant to Paragraph \_\_\_\_ of the Grant, the State may promptly conduct an on-site monitoring of the Project and complete a Project monitoring report as described in Paragraph \_\_\_\_ of this Grant Agreement.
- H. Failure to complete the Project and expend State, local and/or private funds in accordance with this Grant Agreement may be considered a material breach, and shall entitle the State to impose sanctions against the Grantee including, but not limited to, suspension of all grant payments, and/or suspension of the Grantee's participation in State grant programs until such time as all material breaches are cured to the State's satisfaction. Sanctions may also include repayment of all State funds expended that are not in the scope of this Project or the Budget.
- I. All payments shall be made in arrears in conformance with State fiscal policies and procedures and, as required by IC 4-13-2-14.8, by electronic funds transfer to the financial institution designated by the Grantee in writing unless a specific waiver has been obtained from the Auditor of State. No payments will be made in advance of receipt of the goods or services that are the subject of this Grant except as permitted by IC 4-13-2-20 or by the statute authorizing this Grant.

## **6. Audits and Maintenance of Records.**

Grantee shall submit to an audit of funds paid through this Grant Agreement, and shall make all books, accounting records and other documents available at all reasonable times during the term of this Grant Agreement and for a period of three (3) years after final payment for inspection by the State or its authorized designee. Copies shall be furnished to the State at no cost.

## **7. Project Budget and Budget Modification.**

This is specifically a clause for Grants. Remember that your Exhibit reference may be different than the one included here.

The approved Project Budget is set forth as Exhibit \_\_\_\_ of this Grant Agreement. The Grantee shall not spend more than the amount for each line item, as described in the Budget, without the prior written consent of a duly authorized representative of the State, nor shall the Project costs funded by this Grant Agreement and those funded by the local and/or private share be amended without the prior written consent of the State.

## **8. Statutory Authority of Grantee.**

This clause is specifically for Grants.

The Grantee expressly represents and warrants to the State that it is statutorily eligible to receive these monies and it expressly agrees to repay all monies paid to it under this Grant, should a legal determination of its ineligibility be made by any court of competent jurisdiction.

## **9. Use of Grant Funds by Grantee.**

This clause is specifically for Grants, designating the purpose of the “gift”. Remember that your Exhibit reference may be different than the one included here.

The funds received by the Grantee pursuant to this Grant Agreement shall be used only to implement the Project or provide the services in conformance with the Budget and for no other purpose.

## **10. Conflict of Interest.**

You MUST have this clause. If you are using federal dollars and federal language is required, we will accept it in place of the following language.

### **A. As used in this section:**

“Immediate family” means the spouse and the unemancipated children of an individual.

“Interested party,” means:

1. The individual executing this Grant;
2. An individual who has an interest of three percent (3%) or more of Grantee, if Grantee is not an individual; or
3. Any member of the immediate family of an individual specified under subdivision 1 or 2.

“Department” means the Indiana Department of Administration.

“Commission” means the State Ethics Commission.

### **B. The Department may cancel this Grant Agreement without recourse by Grantee if any interested party is an employee of the State of Indiana.**

### **C. The Department will not exercise its right of cancellation under section B above if the Grantee gives the Department an opinion by the Commission indicating that the existence of this contract and the employment by the State of Indiana of the interested party does not violate any statute or code relating to ethical conduct of State employees. The Department may take action, including cancellation of this Grant Agreement consistent with an opinion of the Commission obtained under this section.**

### **D. Grantee has an affirmative obligation under this Grant Agreement to disclose to the Department when an interested party is or becomes an employee of the State of Indiana. The obligation under this section extends only to those facts that Grantee knows or reasonably could know.**

## **11. Drug-Free Workplace Certification.**

You MUST have this clause. Earlier versions of the Contract Manual referred to a separate certification agreement. We have incorporated the language from the old certification agreement into the language of this clause. This clause replaces any previous Drug-Free language.

The Grantee hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. Grantee will give written notice to the State within ten (10) days after receiving actual notice that the Grantee, or an employee of the Grantee in the State of Indiana has been convicted of a criminal

drug violation occurring in the workplace. False certification or violation of the certification may result in sanctions including, but not limited to, suspension of grant payments, termination of the Grant and/or debarment of grant opportunities with the State of Indiana for up to three (3) years.

In addition to the provisions of the above paragraphs, if the total Grant amount set forth in this Grant Agreement is in excess of \$25,000.00, Grantee hereby further agrees that this Grant Agreement is expressly subject to the terms, conditions and representations of the following Certification:

This certification is required by Executive Order No. 90-5, April 12, 1990, issued by the Governor of Indiana. Pursuant to its delegated authority, the Indiana Department of Administration is requiring the inclusion of this certification in all grants with and grants from the State of Indiana in excess of \$25,000.00. No award of a grant shall be made, and no grant, purchase order or agreement, the total amount of which exceeds \$25,000.00, shall be valid, unless and until this certification has been fully executed by the Grantee and made a part of the Grant Agreement as part of the Grant documents.

The Grantee certifies and agrees that it will provide a drug-free workplace by:

- A. Publishing and providing to all of its employees a statement notifying them employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Grantee's workplace and specifying the actions that will be taken against employees for violations of such prohibition; and
- B. Establishing a drug-free awareness program to inform its employees of (1) the dangers of drug abuse in the workplace; (2) the Grantee's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation, and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace; and
- C. Notifying all employees in the statement required by subparagraph (A) above that as a condition of continued employment the employee will (1) abide by the terms of the statement; and (2) notify the Grantee of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction; and
- D. Notifying in writing the State within ten (10) days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction; and
- E. Within thirty (30) days after receiving notice under subdivision (C)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) take appropriate personnel action against the employee, up to and including termination; or (2) require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency; and
- F. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.

## 12. Funding Cancellation.

You **MUST** have this clause. Even in instances where no dollars are being expended, this is important.

When the Director of the Office of Management and Budget makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Grant Agreement, it shall be canceled. A determination by the Budget Director that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

## 13. Compliance with Laws.

You **MUST** use this clause.

a. The Grantee shall comply with all applicable federal, state and local laws, rules, regulations and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment of any state or federal statute or the promulgation of regulations thereunder after execution of this Grant Agreement shall be reviewed by the State and the Grantee to determine whether the provisions of this Grant Agreement require formal modification.

b. The Grantee and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State, as set forth in Indiana Code § 4-2-6 *et seq.*, IC § 4-2-7, *et. seq.*, the regulations promulgated thereunder, and Executive Order 04-08, dated April 27, 2004. If the Grantee is not familiar with these ethical requirements, the Grantee should refer any questions to the Indiana State Ethics Commission, or visit the Indiana State Ethics Commission website at <http://www.in.gov/ethics/>. If the Grantee or its agents violate any applicable ethical standards, the State may, in its sole discretion, terminate this Grant Agreement immediately upon notice to the Grantee. In addition, the Grantee may be subject to penalties under Indiana Code §§ 4-2-6-12 and 4-2-7.

c. The Grantee certifies by entering into this Grant Agreement, that neither it nor its principal(s) is presently in arrears in payment of its taxes, permit fees or other statutory, regulatory or judicially required payments to the State of Indiana. Further, the Grantee agrees that any payments in arrears and currently due to the State may be withheld from payments due to the Grantee. Additionally, further payments may be withheld, delayed, or denied and/or this Grant Agreement suspended until the Grantee is current in its payments and has submitted proof of such payment to the State.

d. The Grantee warrants that it has no current or outstanding criminal, civil, or enforcement actions initiated by the State pending, and agrees that it will immediately notify the State of any such actions. During the term of such actions, Grantee agrees that the State may delay, withhold, or deny work under any supplement, amendment or contractual device issued pursuant to this Agreement.

e. If a valid dispute exists as to the Grantee's liability or guilt in any action initiated by the State or its agencies, and the State decides to delay, withhold, or deny funding to the Grantee, the Grantee may request that funding be continued. The Grantee must submit, in writing, a request for review to the Indiana Department of Administration (IDOA) following the procedures for disputes outlined herein. A determination by IDOA shall be binding on the parties.

f. Any payments that the State may delay, withhold, deny, or apply under this section shall not be subject to penalty or interest under IC 5-17-5.

g. The Grantee warrants that the Grantee and its subcontractors, if any, shall obtain and maintain all required permits, licenses, and approvals, as well as comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities for the State. Failure to do so is a material breach and grounds for immediate termination of this Grant Agreement and denial of further payment by the State.

h. The Grantee hereby affirms that it is properly registered and owes no outstanding reports with the Indiana Secretary of State.

i. As required by IC 5-22-3-7:

(1) the Grantee and any principals of the Grantee certify that (A) the Grantee, except for de minimis and nonsystematic violations, has not violated the terms of (i) IC 24-4.7 [Telephone Solicitation Of Consumers], (ii) IC 24-5-12 [Telephone Solicitations] , or (iii) IC 24-5-14 [Regulation of Automatic Dialing Machines] in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and (B) the Grantee will not violate the terms of IC 24-4.7 for the duration of this Grant Agreement, even if IC 24-4.7 is preempted by federal law.

(2) The Grantee and any principals of the Grantee certify that an affiliate or principal of the Grantee and any agent acting on behalf of the Grantee or on behalf of an affiliate or principal of the Grantee: (A) except for de minimis and nonsystematic violations, has not violated the terms of IC 24-4.7 in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and (B) will not violate the terms of IC 24-4.7 for the duration of this Grant Agreement, even if IC 24-4.7 is preempted by federal law.

#### **14. Nondiscrimination.**

You **MUST** have this clause. Please see the following section for Grants using federal funding.

Pursuant to IC 22-9-1-10 and the Civil Rights Act of 1964, Grantee and its Sub-Grantees shall not discriminate against any employee or applicant for employment in the performance of this Grant Agreement. The Grantee shall not discriminate with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of race, color, religion, sex, disability, national origin or ancestry. Breach of this covenant may be regarded as a material breach of contract. Acceptance of this Grant Agreement also signifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination in the provision of services based on race, color, national origin, age, sex, disability or status as a veteran.

If federal funding is involved with the Grant, you must include the following stipulated language.

The Grantee understands that the State is a recipient of federal funds. Pursuant to that understanding, the Grantee and its subcontractors, if any, agree that if the Grantee employs fifty (50) or more employees and does at least \$50,000.00 worth of business with the State and is not exempt, the Grantee will comply with the affirmative action reporting requirements of 41 CFR 60-1.7. The Grantee shall comply with Section 202 or Executive Order 11246, as amended, 41 CFR 60-250, and 41 CFR 60-741, as amended, which are incorporated herein by specific reference. Breach of this covenant may be regarded as a material breach of contract.

#### **15. Order of Precedence.**

This clause must be included if you make reference to a grant application to clarify the



duties/expectations of the Grantee. This clause can be extremely important when a problem arises. Word the clause accordingly. If you include this clause in your Grant, PLEASE fill in the information appropriately.

Any inconsistency or ambiguity in this Grant Agreement shall be resolved by giving precedence in the following order: (1) This Grant Agreement, (2) Attachments prepared by the State, (3) Attachments prepared by Grantee; (4) Invitation to Apply for Grant; and (5) the Grant Application.

#### **16. Renewal.**

If there is the potential that your agency will want to renew the Grant, this clause is **REQUIRED**. As a matter of policy we will retain the four (4)-year limit on renewals, but are willing to discuss longer terms on a case-by-case basis. Inclusion of this clause in grants does not obligate the State to renew; however, its inclusion may save administrative costs should your agency decide that another year with the Grantee is warranted.

This Grant Agreement may be renewed under the same terms and conditions subject to the approval of the Commissioner of the Department of Administration and the State Budget Director in compliance with IC 5-22-17-4. The term of the renewed Grant Agreement may not be longer than the term of the original Grant Agreement.

#### **17. Termination for Convenience.**

This Grant Agreement may be terminated, in whole or in part, by the State whenever, for any reason, the State determines that such termination is in the best interest of the State. Termination shall be effected by delivery to the Grantee of a Termination Notice, specifying the extent to which such termination becomes effective. The Grantee shall be compensated for completion of the Project properly done prior to the effective date of termination. The State will not be liable for work on the Project performed after the effective date of termination. In no case shall total payment made to the Grantee exceed the original grant.

#### **18. State Boilerplate Affirmation Clause.**

I swear or affirm under the penalties of perjury that I have not altered, modified or changed the State's Boilerplate contract clauses (as defined in the February, 2006 IDOA *Professional Services Contract Manual*) in any way except for the following paragraphs:

#### **19. Non-Collusion and Acceptance.**

You MUST have this clause in your Grant. THIS IS THE FINAL CLAUSE BEFORE THE SIGNATURE PAGE.

The undersigned attests, subject to the penalties of perjury, that he/she is the Grantee, or that he/she is the properly authorized representative, agent, member or officer of the Grantee, that he/she has not, nor has any other member, employee, representative, agent or officer of the Grantee, directly or indirectly, to the best of his/her knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid any sum of money or other consideration for the execution of this Grant Agreement other than that which appears upon the face hereof.

If there is substantial space between the last clause and the bottom of the page (before the signature page),

you should include this statement in very visible form.

**The rest of this page is left blank intentionally.**

**In Witness Whereof**, Grantee and the State of Indiana have, through their duly authorized representatives, entered into this Grant Agreement. The parties having read and understand the foregoing terms of the Grant do by their respective signatures dated below hereby agree to the terms thereof.

**Grantee: Insert Name of Grantee Here**

(Where Applicable)

By: \_\_\_\_\_

Attested By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

\_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_

**State of Indiana Agency:**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Department of Administration**

\_\_\_\_\_  
Earl A. Goode, Commissioner

Date: \_\_\_\_\_

**State Budget Agency**

Approved as to Form & Legality:

**Office of the Attorney General**

\_\_\_\_\_  
Charles E. Schalliol, Director

\_\_\_\_\_  
Stephen Carter, Attorney General

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## EDS AND GRANT CHECK LIST

Before you send your Grant through the signature approval process, check your Grant against the following list. If all items are completed, your Grant should not encounter any problems during the approval process.

### EDS Checklist

	Document properly titled.
	Agency EDS number is complete. Agency automated purchasing system (APS) number – LAST digit from fiscal year – the number assigned by the agency or division. EX: A24-4-48
	Account number/account name from agency fiscal officer.
	Total amount of this EDS action = new contract total.
	New total amount for each fiscal year: when added together should = new contract total.
	FROM/TO: FULL dates so time can be calculated.
	Name of State Agency/Division/Subdivision. Initials are okay.
	Address: the address the grant should be returned to.
	Courier is generally the grant coordinator or the person responsible for tracking the progress of the grant. The agency contact should be the person responsible for the development of the grant.
	Method of Source Selection Marked
	MUST have the Taxpayer Identification Number of the Grantee to enter the data into the system.
	Description of work: one to two sentences describing the scope of work.
	Items requested in box #37 and 38 MUST be provided.
	Approval of agency fiscal officer, verifying that funds are available.
	Dollars match throughout EDS, Grant and all attachments.
	Dates clearly stated (beginning/end) and match throughout EDS, Grant and all attachments are within the limits (4 years).
	If your grant is being placed in the signature cycle more than 30 days after the agreement has started, enter an explanation as to why in box #39.
	All names are consistent throughout the EDS, Grant and all attachments.
	<b>EDS COMPLETE AND INCLUDED WITH GRANT AS FACE SHEET</b>

### Grant Checklist

	Grantee used for all clauses in place of Contractor
	Terms spelled out, consistent, do not conflict with federal or state law, etc.
	All contract documents are paginated and in order.
	Attachments/exhibits are attached following the signature page. All exhibits/attachments are labeled in accordance with the references made in the grant. No exhibits/attachments have been included that were not referenced within the grant.
	<b>IDOA EITHER RECOMMENDS OR REQUIRES THESE BOILER PLATE CLAUSES</b>
	Conflict of Interest Statement MUST HAVE
	Drug-free workplace Certification MUST HAVE
	Funding Cancellation MUST HAVE
	Non-Collusion Statement MUST HAVE
	Non-Discrimination Clause MUST HAVE
	Purpose of Agreement MUST HAVE
	Design and Implementation of Project VERY IMPORTANT
	Monitoring Report by the State VERY IMPORTANT
	Payment of Grant Funds by the State VERY IMPORTANT
	Project Budget and Budget Modification VERY IMPORTANT
	Statutory Authority of Grantee VERY IMPORTANT
	Use of Funds by Grantee VERY IMPORTANT
	Force Majeure; Suspension and Termination of Contract IMPORTANT
	Governing Laws IMPORTANT
	Indemnity (Hold-Harmless Clause; State does not hold other party harmless) IMPORTANT
	Notice IMPORTANT
	Progress Reports / Access to Records VERY USEFUL
	Renewal Option (no more than 4 years) VERY USEFUL
	SIGNATURE PAGE: Grantee and State Agency
	SIGNATURE PAGE: Earl A. Goode, Commissioner, Indiana Department of Administration
	SIGNATURE PAGE: Charles E. Schalliol, Director, State Budget Agency
	SIGNATURE PAGE: Stephen Carter, Attorney General of Indiana
	<b>GRANT COMPLETE WITH ALL NEEDED SIGNATURES</b>



## Amendment Development

### Reminders:

The Amendment Boilerplate should be used when you wish to alter the terms and/or conditions of an original contract/grant. An Amendment is also used when the identity of the Contractor or Grantee changes because of a corporate purchase, sale, or other re-structuring. If your agency wishes to modify the terms of the original contract/grant and renew the contract/grant for an additional term, both of these things can be done within an amendment. Be sure to consecutively number your amendments

1. Please include an Executive Document Summary as the face sheet of your Amendment.
2. Amendments MUST be numbered.
3. The original contract/grant being modified, and any amendment(s) previously executed, MUST be attached to the amendment document.
4. Please provide a justification as to why the original contract/grant must be amended. For example, why was the additional work being requested not in the original contract/grant? Is the work covered under the amendment in line with the work described in the original contract/grant?
5. If you are amending the dollar amount of the original contract/grant, please explain the need for the increase/decrease and any deviation from the original rate of compensation. Without a material change in the type or, in some cases, quantity of work to be performed justifying it, a change in the rate of compensation will not be approved.
6. The amendment signature page must duplicate the signature page of the original contract/grant.

**Amendment # \_\_\_\_\_ / Renewal # \_\_\_\_\_**

This is an amendment/renewal to the Contract (the "Contract") entered into by and between the \_\_\_\_\_ (the "State") and \_\_\_\_\_ (the "Contractor") dated \_\_\_\_\_

In consideration of the mutual undertakings and covenants hereinafter set forth, the parties agree as follows:

The Contract is hereby renewed for an additional period of \_\_\_\_\_. It shall terminate on \_\_\_\_\_, 200\_\_.

The hourly rate for this renewal term is \_\_\_\_\_. Total remuneration under the Contract is not to exceed \$ \_\_\_\_\_. ***(YOU WILL NEED TO MODIFY TO FIT THE PARTICULAR CIRCUMSTANCES OF THE CONTRACT BEING RENEWED.)***

The following clauses in the Contract are amended as follows:

Payment. Paragraph \_\_\_\_\_ relating to payment is hereby amended to read as follows:

All payments shall be made in arrears in conformance with State fiscal policies and procedures and, as required by IC 4-13-2-14.8, by electronic funds transfer to the financial institution designated by the Contractor in writing unless a specific waiver has been obtained from the Auditor of State. No payments will be made in advance of receipt of the goods or services that are the subject of this Contract except as permitted by IC 4-13-2-20.

Information Technology Enterprise Architecture Requirements. Paragraph \_\_ relating to information technology is hereby deleted in its entirety and replaced with the following:

If Contractor provides any information technology related products or services to the State, Contractor shall comply with all Indiana Office of Technology (IOT) standards, policies, and guidelines, which are online at <http://iot.in.gov/architecture/>. Contractor specifically agrees that all hardware, software, and services provided to or purchased by the State shall be compatible with the principles and goals contained in the electronic and information technology accessibility standards adopted under Section 508 of the Federal Rehabilitation Act of 1973 (29 U.S.C. 794d) and IC 4-13.1-3. Any deviation from these architecture requirements must be approved in writing by IOT in advance. The State may terminate this contract for default if Contractor fails to cure a breach of this provision within a reasonable time.

The following clauses are made a part of the Contract:

Compliance with State Ethics Law

The Contractor and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State, as set forth in IC § 4-2-6 et seq., I.C. § 4-2-7 et seq., the regulations promulgated thereunder, and Executive Order 04-08, dated April 27, 2004. If the contractor is not familiar with these ethical requirements, the Contractor should refer any questions to the Indiana State Ethics Commission, or visit the Indiana State Ethics Commission website at [<<<http://www.in.gov/ethics/>>>](http://www.in.gov/ethics/). If the Contractor or its agents violate any applicable ethical standards,



the State may, in its sole discretion, terminate this Contract immediately upon notice to the contractor. In addition, the Contractor may be subject to penalties under Indiana Code § 4-2-6 or 4-2-7.

#### Compliance with Indiana's Telephone Privacy Law

As required by IC 5-22-3-7:

(1) the Contractor and any principals of the Contractor certify that (A) the Contractor, except for de minimis and nonsystematic violations, has not violated the terms of (i) IC 24-4.7 [Telephone Solicitation Of Consumers], (ii) IC 24-5-12 [Telephone Solicitations] , or (iii) IC 24-5-14 [Regulation of Automatic Dialing Machines] in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and (B) the Contractor will not violate the terms of IC 24-4.7 for the duration of the Contract, even if IC 24-4.7 is preempted by federal law.

(2) The Contractor and any principals of the Contractor certify that an affiliate or principal of the Contractor and any agent acting on behalf of the Contractor or on behalf of an affiliate or principal of the Contractor: (A) except for de minimis and nonsystematic violations, has not violated the terms of IC 24-4.7 in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and (B) will not violate the terms of IC 24-4.7 for the duration of the Contract, even if IC 24-4.7 is preempted by federal law.

All other matters previously agreed to and set forth in the original Contract and not affected by this Amendment / Renewal shall remain in full force and effect.

#### **Non-Collusion and Acceptance**

The undersigned attests, subject to the penalties of perjury, that he/she is the Contractor, or that he/she is the duly authorized representative, agent, member or officer of the Contractor, that he/she has not, nor has any other member, employee, representative, agent or officer of the Contractor, to the best of his/her knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Amendment other than that which appears upon the face hereof.

THE REMAINDER OF THIS PAGE IS LEFT BLANK INTENTIONALLY.

In Witness Whereof, Contractor and the State of Indiana have, through duly authorized representatives, entered into this Amendment. The parties having read and understand the foregoing terms of this Amendment do by their respective signatures dated below hereby agree to the terms thereof.

Contractor:

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**State of Indiana Agency:**

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**Indiana Office of Technology**

BY : \_\_\_\_\_  
Karl Browning, Director  
  
Dated: \_\_\_\_\_

**State Budget Agency**

By: \_\_\_\_\_  
Charles E. Schalliol, Director  
  
Date: \_\_\_\_\_

**Department of Administration**

By: \_\_\_\_\_  
Earl A. Good, Commissioner  
  
Dated: \_\_\_\_\_

**Approved as to Form & Legality:  
Office of the Attorney General**

By : \_\_\_\_\_  
Stephen Carter, Attorney General  
  
Date: \_\_\_\_\_

## **EDS and Amendment Checklist**

### **EDS Checklist**

	Document properly titled.
	Agency EDS number is complete. Agency automated purchasing system (APS) number – Last digit from fiscal year – the number assigned by the agency or division.
	Total amount of this EDS action = this EDS action + contract/grant total from prior EDS.
	New total amount for each fiscal year: when added together should = new contract/grant total.
	FROM/TO: FULL dates provided so that time can be calculated.
	Name of State Agency/Division/Subdivision.
	Address: the address to which the contract should be returned.
	Courier is generally the contract coordinator or the person responsible for tracking the progress of the contract/grant. The agency contact should be the person responsible for the development of the contract/grant.
	All names are consistent throughout the EDS, Amendment, and all attachments.
	Dollars are consistent throughout the EDS, Amendment and all attachments.
	Dates clearly stated.
	Provide explanation as to why changes to the original document were needed.
	Approval of agency fiscal officer, verifying that funds are available.
	<b>EDS COMPLETE AND INCLUDED WITH AMENDMENT AS FACE SHEET.</b>

### **Amendment Checklist**

	Amendment is numbered.
	All terms spelled out, consistent, do not conflict with federal law or state law, etc.
	Non-Collusion Statement. <b>MUST HAVE</b>
	Original contract and prior Amendments attached.
	All contract/grant documents are paginated and in order.
	Attachments/Exhibits are attached following the signature page. All exhibits/attachments are labeled in accordance with the references made in the Amendment. No exhibits/attachments have been included that were not referenced within the Amendment.
	Signatures replicate the Signature Page of the Original Contract/Grant.



**Renewal Development  
Renewal Boilerplate**

Renewals should be used when your agency would like to continue the same terms and conditions of the original contract/grant for an additional term. Renewals cannot contain any modification to the contract/grant.

**Reminders:**

1. An expired contract/grant cannot be renewed.
2. A contract/grant cannot be renewed if there was not a renewal clause in the original contract/grant nor may it be renewed for a term longer than the original term.
3. When you renew the contract/grant, you are bringing all the original terms and conditions forward for another term (i.e. one additional year and \$10,000 more dollars).
4. Please include an Executive Document Summary (EDS) as the face sheet of your Renewal.
5. Renewals must be numbered.
6. A renewal may allow for an increase in payment only if an increase has been provided for in the original contract/grant.
7. The original contract/grant being renewed MUST be attached to the renewal document.
8. The renewal signature page does not require the approval of the Attorney General's Office or the Information Technology Oversight Commission/Indiana Office of Technology.
9. If you only need more time on the contract/grant to complete work in process, you may want to consider an amendment to extend the term only.
10. Two types of renewal language have been offered for your use. **ONLY USE ONE.**
11. We retain a four (4) year limit on renewals, but are willing to discuss longer terms on a case by case basis.

**Renewal # \_\_\_\_\_**  
**(For Renewals that DO NOT allow for a price increase)**

Pursuant to IC 5-22-17-4 and the terms of the contract/grant, \_\_\_\_\_ (the "State") exercises its option to renew its contract/grant with \_\_\_\_\_ (the "Contractor" / "Grantee") under the same terms and conditions of the original contract/grant dated \_\_\_\_\_. The entire contract/grant shall commence on \_\_\_\_\_ and shall terminate on \_\_\_\_\_.

The total amount of the renewal is the amount owing during the renewal period. The total remuneration of the contract/grant is the amount committed for the full life of the contract/grant.

Total amount of this renewal is \$ \_\_\_\_\_. Total remuneration of this contract/grant is not to exceed \$ \_\_\_\_\_.

**Non-Collusion and Acceptance**

You MUST have this clause in your renewal. THIS SHOULD BE THE FINAL CLAUSE BEFORE THE SIGNATURE PAGE. All Contracts, Grants, Amendments, Renewals, Addendums, etc. must include this clause.

The undersigned attests, subject to the penalties for perjury, that he/she is the Contractor, or that he/she is the representative, agent, member or officer of the Contractor, that he/she has not, nor has any other member, employee, representative, agent or officer of the Contractor, directly or indirectly, to the best of his/her knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid any sum of money or other consideration for the execution of this Renewal, other than that which appears upon the face hereof.

All other matters previously agreed to and set forth in the original Contract shall remain in full force and effect.

**In Witness Whereof**, Contractor/Grantee and the State of Indiana have, through duly authorized representatives, entered into this contract/grant. The parties having read and understand the foregoing terms of the contract/grant do by their respective signatures dated below hereby agree to the terms thereof.

**Contractor/Grantee:**

**State of Indiana Agency:**

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**Department of Administration**

**State Budget Agency**

\_\_\_\_\_  
Earl A. Goode, Commissioner

\_\_\_\_\_  
Charles E. Schalliol, Director

Date: \_\_\_\_\_

Date: \_\_\_\_\_

(If the original contract/grant says that the Renewal is at the sole discretion of the State, then the Contractor's/Grantee's signature is not necessary.)

**Renewal # \_\_\_\_\_**  
**(For Renewals that DO allow for a price increase)**

Pursuant to IC 5-22-17-4 and the terms of the contract/grantee, \_\_\_\_\_ (the "State") exercises its option to renew its contract/grant with \_\_\_\_\_ (the "Contractor" / "Grantee") under the same terms and conditions of the original contract/grant dated \_\_\_\_\_. The entire contract/grant shall commence on \_\_\_\_\_ and shall terminate on \_\_\_\_\_.

The total amount of the renewal is the amount owing during the renewal period. The total remuneration of the contract/grant is the amount committed for the full life of the contract/grant.

In accordance with the original contract/grant an increase of \_\_\_\_\_, shall be allowed during this renewal period.

Total amount of this renewal is \$\_\_\_\_\_. Total remuneration of this contract/grant is not to exceed \$\_\_\_\_\_.

**Non-Collusion and Acceptance**

You MUST have this clause in your contract. THIS SHOULD BE THE FINAL CLAUSE BEFORE THE SIGNATURE PAGE. All Contracts, Grants, Amendments, Renewals, Addendums, etc. must include this clause.

The undersigned attests, subject to the penalties for perjury, that he/she is the Contractor, or that he/she is the representative, agent, member or officer of the Contractor, that he/she has not, nor has any other member, employee, representative, agent or officer of the Contractor, directly or indirectly, to the best of his/her knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid any sum of money or other consideration for the execution of this Renewal other than that which appears upon the face hereof.

All other matters previously agreed to and set forth in the original Contract shall remain in full force and effect.

**In Witness Whereof**, Contractor/Grantee and the State of Indiana have, through duly authorized representatives, entered into this contract/grant. The parties having read and understand the foregoing terms of the contract/grant do by their respective signatures dated below hereby agree to the terms thereof.

**Contractor:**

**State of Indiana Agency:**

(If the original Contract/Grant says that the Renewal is at the sole discretion of the state, then the Contractor's/Grantee's signature is not necessary.)

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**Department of Administration**

**State Budget Agency**

\_\_\_\_\_  
Earl A. Goode, Commissioner  
Commissioner  
Date: \_\_\_\_\_

\_\_\_\_\_  
Charles E. Schalliol, Director  
Director  
Date: \_\_\_\_\_

## EDS AND RENEWAL CHECKLIST

### EDS Checklist

	Document properly titled.
	Agency EDS number is complete. Agency automated purchasing system (APS) number – Last digit from fiscal year – the number assigned by the agency or division.
	Total amount of this EDS action = this EDS action + contract/grant total from prior EDS.
	New total amount for each fiscal year: when added together should = new contract/grant total.
	FROM / TO: FULL dates provided so that time can be calculated.
	Name of State Agency/Division/Subdivision.
	Address: the address to which the contract/grant should be returned.
	Courier is generally the contract/grant coordinator or the person responsible for tracking the progress of the contract/grant. The agency contact should be the person responsible for the development of the contract/grant.
	All names are consistent throughout the EDS, Renewal, and all attachments.
	Dollars are consistent throughout the EDS, Renewal and all attachments.
	Dates clearly stated.
	Approval of agency fiscal officer, verifying that funds are available.
	<b>MUST have a Minority Business Plan and or Waiver request attached to the contract Is this still necessary?</b>
	EDS COMPLETE AND INCLUDED WITH RENEWAL AS FACE SHEET

### Renewal Checklist

	Renewal is Numbered
	If price increase included, it was provided for in original contract/grant.
	Original and subsequent modifications and renewals are attached.
	All contract/grant documents are paginated and in order.
	SIGNATURE PAGE: Obtain Signature of Contractor/Grantee (If Necessary) and Agency Representative.
	SIGNATURE PAGE: Earl A. Goode, Commissioner, Indiana Department of Administration.
	SIGNATURE PAGE: Charles E. Schalliol, Director, State Budget Agency.
	RENEWAL COMPLETE



## Contract Addendum Development

### Addendum Boilerplate

When a contractor insists on using his/her own standard contract agreement, you must prepare and attach an addendum. The addendum incorporates the State's standard contract provisions. **DO NOT SIGN THE CONTRACTOR'S FORM**; all parties must sign the State's Addendum Signature Page.

### Reminders:

As with the Contract Boilerplate, certain clauses have been designated as **required** and must be included in every addendum. The balance of the clauses is presented for your use and you should include as many as necessary to meet your agency needs.

Due to the way this material is presented, the clauses are not necessarily in order, nor are they numbered. **PLEASE NUMBER YOUR CLAUSES**, either by Roman numeral (I, II) or by Arabic numeral (1, 2). You should also make sure that your references to other contract clauses and attachments are correct.

Please include a completed Executive Document Summary (EDS) as the face sheet of your contract.

Remove the instruction language from the clauses before inserting them in your contract.

Fill in all blanks, even if using N/A.

## ADDENDUM

This Addendum is entered into by and between \_\_\_\_\_ (“the State”) and the entity designated as “Contractor”, below.

The purpose of this Addendum is to modify, delete, or amend certain terms and conditions set forth in the attached Form Contract prepared by Contractor (the “Form Contract”). This Addendum and the Form Contract are incorporated into each other and, when read together, shall constitute one integrated document. Any inconsistency, conflict, or ambiguity between this Addendum and the Form Contract shall be resolved by giving precedence and effect to this Addendum.

Contractor Name:

Contractor Address:

Title of Form Contract:

Attached Form Contract consists of \_\_\_\_ pages (with / without) terms on both sides.

Contract term begins on \_\_\_\_\_ and ends \_\_\_\_\_.

Total consideration for term of the Contract Form Contract is \_\_\_\_\_ (\$ xxx,xxx.xx).

By mutual agreement of the parties, the following terms and conditions are deleted from the Form Contract:

- A. Any provision requiring the State of Indiana to provide insurance
- B. Any provision requiring the State of Indiana to provide indemnity
- C. Any provision providing that the Contract be construed in accordance with laws other than those of the State of Indiana
- D. Any provision providing that suit be brought in any state other than Indiana
- E. Any provision providing for resolution of contract disputes
- F. Any provision requiring the State of Indiana to pay any taxes
- G. Any provision requiring the State of Indiana to pay penalties, liquidated damages, interest or attorney’s fees
- H. Any provision modifying the statute of limitations provided by Indiana statute.
- I. Any provision relating to the time within which a claim must be made.
- J. Any provision requiring payment of consideration in advance unless authorized by an exception listed in IC 4-13-2-20
- K. Any provision limiting disclosure of the contract in violation of the Access to Public Records Act, IC 5-14-3-3.5
- L. Any provision giving the Form Contract precedence over this Addendum

The following terms and conditions are incorporated into and made a part of the Form Contract:

**1. Assignment; Successors.** The Contractor binds its successors and assignees to all the terms and conditions of this Contract. The Contractor shall not assign or subcontract the whole or any part of the Form Contract without the State’s prior written consent. The Contractor may assign its right to receive payments to such third parties as the Contractor may desire without the prior written consent of the State,

provided that Contractor gives written notice (including evidence of such assignment) to the State thirty (30) days in advance of any payment so assigned. The assignment shall cover all unpaid amounts under the Form Contract and shall not be made to more than one party.

**2. Authority to Bind Contractor.** The signatory for the Contractor represents that he/she has been duly authorized to execute this Addendum on behalf of the Contractor and has obtained all necessary or applicable approvals to make this Addendum and the Form Contract fully binding upon the Contractor when his/her signature is affixed, and certifies that the Form Contract is not subject to further acceptance by Contractor when accepted by the State of Indiana.

**3. Compliance with Laws.**

A. The Contractor shall comply with all applicable federal, state and local laws, rules, regulations and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment of any state or federal statute or the promulgation of rules or regulations thereunder after execution of this Addendum and the Form Contract shall be reviewed by the State and the Contractor to determine whether the provisions of either require formal modification.

B. The Contractor and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State, as set forth in IC § 4-2-6 *et seq.*, IC § 4-2-7, *et. seq.*, the regulations promulgated thereunder, and Executive Order 04-08, dated April 27, 2004. If the Contractor is not familiar with these ethical requirements, the Contractor should refer any questions to the Indiana State Ethics Commission, or visit the Indiana State Ethics Commission website at <http://www.in.gov/ethics/>. If the Contractor or its agents violate any applicable ethical standards, the State may, in its sole discretion, terminate the Form Contract immediately upon notice to the Contractor. In addition, the Contractor may be subject to penalties under Indiana Code § 4-2-6 and IC § 4-2-7.

C. The Contractor certifies by signing this Addendum, that neither it nor its principal(s) is presently in arrears in payment of its taxes, permit fees or other statutory, regulatory or judicially required payments to the State. Further, the Contractor agrees that any payments in arrears and currently due to the State of Indiana may be withheld from payments due to the Contractor. Additionally, further work or payments may be withheld, delayed, or denied and/or the Form Contract suspended until the Contractor is current in its payments and has submitted proof of such payment to the State.

D. The Contractor warrants that it has no current or pending or outstanding criminal, civil, or enforcement actions initiated by the State pending, and agrees that it will immediately notify the State of any such actions. During the term of such actions, Contractor agrees that the State may delay, withhold, or deny work under any supplement, amendment, change order or other contractual device issued pursuant to this Addendum and the Form Contract.

E. If a valid dispute exists as to the Contractor's liability or guilt in any action initiated by the State of Indiana or its agencies, and the State decides to delay, withhold, or deny work to the Contractor, the Contractor may request that it be allowed to continue, or receive work, without delay. The Contractor must submit, in writing, a request for review to the Indiana Department of Administration (IDOA) following the procedures for disputes outlined herein. A determination by IDOA shall be binding on the parties.

F. Any payments that the State may delay, withhold, deny, or apply under this section shall not be subject to penalty or interest under IC 5-17-5.

G. The Contractor warrants that the Contractor and its subcontractors, if any, shall obtain and maintain all required permits, licenses, and approvals, as well as comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities for the State. Failure to do so may be deemed is a material breach of this Contract and grounds for immediate termination of the Agreement and denial of further work with the State.

H. The Contractor hereby affirms that, if it is an entity described in IC Title 23, it is properly registered and owes no outstanding reports with the Indiana Secretary of State.

I. As required by IC 5-22-3-7:

(1) the Contractor and any principals of the Contractor certify that (A) the Contractor, except for de minimis and nonsystematic violations, has not violated the terms of (i) IC 24-4.7 [Telephone Solicitation Of Consumers], (ii) IC 24-5-12 [Telephone Solicitations] , or (iii) IC 24-5-14 [Regulation of Automatic Dialing Machines] in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and (B) the Contractor will not violate the terms of IC 24-4.7 for the duration of the Contract, even if IC 24-4.7 is preempted by federal law.

(2) The Contractor and any principals of the Contractor certify that an affiliate or principal of the Contractor and any agent acting on behalf of the Contractor or on behalf of an affiliate or principal of the Contractor: (A) except for de minimis and nonsystematic violations, has not violated the terms of IC 24-4.7 in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and (B) will not violate the terms of IC 24-4.7 for the duration of the Contract, even if IC 24-4.7 is preempted by federal law.

**4. Condition of Payment.** All services provided by the Contractor under the Form Contract must be performed to the State's reasonable satisfaction, as determined at the discretion of the undersigned State representative and in accordance with all applicable federal, state, local laws, ordinances, rules, and regulations. The State shall not be required to pay for work found to be unsatisfactory, inconsistent with the Form Contract or performed in violation of any federal, state, or local statute, ordinance, rule or regulation.

**5. Confidentiality of State Information.** The Contractor understands and agrees that data, materials, and information disclosed to Contractor may contain confidential and protected information. The Contractor covenants promises and assures that data, material, and information gathered, based upon, or disclosed to the Contractor for the purpose of this Contract, will not be disclosed to others or discussed with third parties without the prior written consent of the State.

**6. Conflict of Interest.**

E. As used in this section:

"Immediate family" means the spouse and the unemancipated children of an individual.

"Interested party," means:

4. The individual executing this Contract;

5. An individual who has an interest of three percent (3%) or more of Contractor, if Contractor is not an individual; or

6. Any member of the immediate family of an individual specified under subdivision 1 or 2.

"Department" means the Indiana Department of Administration.

"Commission" means the State Ethics Commission.

- F. The Department may cancel the Form Contract without recourse by Contractor if any interested party is an employee of the State of Indiana.
- G. The Department will not exercise its right of cancellation under section B, above, if the Contractor gives the Department an opinion by the Commission indicating that the existence of the Form Contract and the employment by the State of the interested party does not violate any statute or rule relating to ethical conduct of State employees. The Department may take action, including cancellation of the Form Contract, consistent with an opinion of the Commission obtained under this section.
- H. Contractor has an affirmative obligation under this Addendum to disclose to the Department when an interested party is or becomes an employee of the State of Indiana. The obligation under this section extends only to those facts that Contractor knows or reasonably could know.

## **7. Debarment and Suspension.**

A. The Contractor certifies that neither it nor its principals nor any of its subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into the Form Contract by any federal agency or by any department, agency or political subdivision of the State. The term "principal" for purposes of the Form Contract means an officer, director, owner, partner, key employee, or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Contractor.

B. The Contractor also further certifies that it has verified the suspension and debarment status for all sub-contractors receiving funds under the Form Contract and shall be solely responsible for any recoupments, paybacks and or penalties that might arise from non-compliance. The Contractor shall immediately notify the State if any sub-contractor becomes debarred or suspended, and shall, at the State's request, take all steps required by the State to terminate its contractual relationship with the sub-contractor for work to be performed under this Contract.

**8. Default by State.** If the State, sixty (60) days after receipt of written notice, fails to correct or cure any breach of the Form Contract, then the Contractor may cancel and terminate the Form Contract and institute the appropriate measures to collect all monies due up to and including the date of termination.

## **9. Disputes.**

- A. Should any disputes arise with respect to the Form Contract, the Contractor and the State agree to act immediately to resolve such disputes. Time is of the essence in the resolution of disputes.
- B. The Contractor agrees that, the existence of a dispute notwithstanding, it will continue without delay to carry out all its responsibilities under this Form Contract that are not affected by the dispute. Should the Contractor fail to continue to perform its responsibilities regarding all non-disputed work without delay, any additional costs incurred by the State or the Contractor as a result of such failure to proceed shall be borne by the Contractor, and the Contractor shall make no claim against the State for such costs. If the State and the Contractor cannot resolve a dispute within ten (10) working days following notification in writing by either party of the existence of a dispute, then the following procedure shall apply:

1. The parties agree to resolve such matters through submission of their dispute to the Commissioner of the Indiana Department of Administration. The Commissioner shall reduce a decision to writing and mail or otherwise furnish a copy thereof to the Contractor and the State within ten (10)

working days after presentation of such dispute for action. The Commissioner's decision shall be final and conclusive unless either party mails or otherwise furnishes to the Commissioner, within ten (10) working days after receipt of the Commissioner's decision, a written appeal. Within ten (10) working days of receipt by the Commissioner of a written request for appeal, the decision may be reconsidered. If no reconsideration is provided within ten (10) working days, the parties may mutually agree to submit the dispute to arbitration for a determination, or otherwise the dispute may be submitted to an Indiana court of competent jurisdiction.

2. The State may withhold payments on disputed items pending resolution of the dispute. The unintentional nonpayment by the State to the Contractor of one or more invoices not in dispute in accordance with the terms of this Form Contract will not be cause for Contractor to terminate the Form Contract, and the Contractor may bring suit to collect these amounts without following the disputes procedure contained herein.

**10. Drug-Free Workplace Certification.** The Contractor hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. The Contractor will give written notice to the State within ten (10) days after receiving actual notice that the Contractor or an employee of the Contractor in the State of Indiana has been convicted of a criminal drug violation occurring in the workplace. False certification or violation of this certification may result in sanctions including, but not limited to, suspension of contract payments, termination of the Form Contract and/or debarment of contracting opportunities with the State for up to three (3) years.

In addition to the provisions of the above paragraphs, if the total contract amount set forth in the Form Contract is in excess of \$25,000.00, Contractor hereby further agrees that the Form Contract is expressly subject to the terms, conditions, and representations of the following certification:

This certification is required by Executive Order No. 90-5, April 12, 1990, issued by the Governor of Indiana. Pursuant to its delegated authority, the Indiana Department of Administration is requiring the inclusion of this certification in all contracts and grants from the State in excess of \$25,000.00. No award of a contract shall be made, and no contract, purchase order or agreement, the total amount of which exceeds \$25,000.00, shall be valid, unless and until this certification has been fully executed by the Contractor and made a part of the contract or agreement as part of the contract documents.

The Contractor certifies and agrees that it will provide a drug-free workplace by:

A. Publishing and providing to all of its employees a statement notifying them that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Contractor's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;

B. Establishing a drug-free awareness program to inform it's employees of (1) the dangers of drug abuse in the workplace; (2) the Contractor's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation, and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;

C. Notifying all employees in the statement required by subparagraph (A) above that as a condition of continued employment, the employee will (1) abide by the terms of the statement; and (2) notify the Contractor of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;

D. Notifying in writing the State within ten (10) days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction;

E. Within thirty (30) days after receiving notice under subdivision (C)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) taking appropriate personnel action against the employee, up to and including termination; or (2) requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and

F. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.

**11. Funding Cancellation.** When the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of the Form Contract, the Form Contract shall be canceled. A determination by the Budget Director that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

**12. Governing Laws.** This Addendum and the Form Contract shall be construed in accordance with and governed by the laws of the State of Indiana and suit, if any, must be brought in the State of Indiana.

**13. Indemnification.** The Contractor agrees to indemnify, defend, and hold harmless the State, its agents, officers, and employees from all claims and suits including court costs, attorney's fees, and other expenses caused by any act or omission of the Contractor and/or its subcontractors, if any, in the performance of the Contract. The State shall **not** provide such indemnification to the Contractor.

**14. Information Technology Enterprise Architecture Requirements.** If Contractor provides any information technology related products or services to the State, Contractor shall comply with all Indiana Office of Technology (IOT) standards, policies, and guidelines, which are online at <http://iot.in.gov/architecture/>. Contractor specifically agrees that all hardware, software, and services provided to or purchased by the State shall be compatible with the principles and goals contained in the electronic and information technology accessibility standards adopted under Section 508 of the Federal Rehabilitation Act of 1973 (29 U.S.C. 794d) and IC 4-13.1-3. Any deviation from these architecture requirements must be approved in writing by IOT in advance. The State may terminate the Form Contract for default if Contractor fails to cure a breach of this provision within a reasonable time.

**15. Licensing Standards.** The Contractor and its employees and subcontractors shall comply with all applicable licensing standards, certification standards, accrediting standards and any other laws, rules or regulations governing services to be provided by the Contractor pursuant to the Form Contract. The State shall not be required to pay the Contractor for any services performed when the Contractor or its employees or subcontractors are not in compliance with such applicable standards, laws, rules or regulations. If licensure, certification or accreditation expires or is revoked, or if disciplinary action is taken against the applicable licensure, certification, or accreditation, the Contractor shall notify State immediately and the State, at its option, may immediately terminate the Form Contract.

**16. Nondiscrimination.** Pursuant to IC 22-9-1-10 and the Civil Rights Act of 1964, the Contractor and its subcontractors shall not discriminate against any employee or applicant for employment in the performance of this Contract. The Contractor shall not discriminate with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of race, color, religion, sex, disability, national origin or ancestry. Breach of this covenant may

be regarded as a material breach of contract. The Contractor's execution of this Addendum also signifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination in the provision of services based on race, color, national origin, age, sex, disability or status as a veteran.

**17. Order of Precedence.** Any inconsistency or ambiguity between this Addendum and the Form Contract shall be resolved by giving precedence to this Addendum.

**18. Payments.** All payments shall be made in arrears in conformance with State fiscal policies and procedures and, as required by IC 4-13-2-14.8, by electronic funds transfer to the financial institution designated by the Contractor in writing unless a specific waiver has been obtained from the Auditor of State. No payments will be made in advance of receipt of the goods or services that are the subject of this Form Contract except as permitted by IC 4-13-2-20.

**19. Penalties/Interest/Attorney's Fees.** The State will in good faith perform its required obligations hereunder and does not agree to pay any penalties, liquidated damages, interest, or attorney's fees, except as required by Indiana law, in part, IC 5-17-5, IC 34-54-8, and IC 34-13-1.

**20. Taxes.** The State is exempt from state and local taxes and many federal taxes. The State will not be responsible for any taxes levied on the Contractor as a result of this Contract.

**21. Termination for Convenience.** The Form Contract may be terminated, in whole or in part, by the State whenever, for any reason, the State determines that such termination is in its best interest. Termination of services shall be effected by delivery to the Contractor of a Termination Notice at least thirty (30) days prior to the termination effective date, specifying the extent to which performance of services under such termination becomes effective. The Contractor shall be compensated for services properly rendered prior to the effective date of termination. The State will not be liable for services performed after the effective date of termination. The Contractor shall be compensated for services herein provided but in no case shall total payment made to the Contractor exceed the original contract price or shall any price increase be allowed on individual line items if canceled only in part prior to the original termination date.

#### **NON-COLLUSION AND ACCEPTANCE**

The undersigned attests, subject to the penalties for perjury, that he/she is the Contractor, or that he/she is the properly authorized representative, agent, member or officer of the Contractor, that he/she has not, nor has any other member, employee, representative, agent or officer of the Contractor, directly or indirectly, to the best of his/her knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Addendum and the Form Contract other than that which appears upon the face hereof.

**The rest of this page is left blank intentionally.**



**In Witness Whereof**, the Contractor and the State have, through their duly authorized representatives, entered into this Addendum and the Form Contract. The parties, having read and understand the foregoing terms, do by their respective signatures dated below hereby agree to the terms thereof.

**Contractor:**

(Where Applicable)

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Attested By: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**State of Indiana Agency:**

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**Information Office of Technology Oversight**

**Department of Administration Commission**

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
Earl A. Goode, Commissioner  
Date: \_\_\_\_\_

**State Budget Agency**

**APPROVED as to Form and Legality:  
Office of the Attorney General**

\_\_\_\_\_  
Charles E. Schalliol, Director  
Date: \_\_\_\_\_

\_\_\_\_\_  
Stephen Carter, Attorney General  
Date: \_\_\_\_\_

## **University Contract/Grant Development and Boilerplate Modifications**

The 2004 Contract Manual had a separate template to be used in contracts or grants with State universities. It is in the process of being reviewed, and may be posted to IDOA's website in the future. Until then, please use the following as a guideline when doing a contract or grant with a State educational institution.

### **Relationship of Executive Branch Agencies to State Educational Institutions**

Our state universities are, like executive branch agencies, tax supported entities that are governed by many of the same laws, procurement requirements, and guidelines that executive branch agencies must follow. Therefore, it is not generally necessary to expect our universities to be subject to the same terms and conditions that would apply to private businesses. Many of the risks associated with doing business with a private concern simply do not exist in working with a state supported university.

### **Research Projects**

Unlike private entities, universities typically retain certain ownership and publication rights in research or studies they undertake. The following language has been the subject of detailed discussions between IDOA and appropriate university personnel. Unless the agency has a compelling reason to the contrary, which it can support in writing, the following language should be used in university contracts involving research studies, projects or the like:

**Confidentiality of Data, Property Rights in Products, Copyright Prohibition and Ownership of Documents and Materials.** Publication and dissemination of the project results are of fundamental importance to both the State and the Contractor. To that end, the parties agree that all information, data, findings, recommendations, proposals, etc. by whatever name described and in whatever form secured, developed, written or produced by the Contractor in furtherance of this Contract shall be jointly owned by the State and the Contractor. The Contractor shall take such action as is necessary under law to preserve such confidentiality and property rights in and of the State while such property is within the control and/or custody of the Contractor. During the performance of the services specified herein, the Contractor shall be responsible for any loss of or damage to these materials developed for or supplied by the State and used to develop or assist in the services provided herein while the materials are in the possession of the Contractor. Any loss or damage thereto shall be restored at the Contractor's expense. Full, immediate, and unrestricted access to the work product of the Contractor during the term of this contract shall be available to the State. Use of these materials, other than related to the contract performance by the Contractor, that includes any reference to the State of Indiana, without the prior written consent of the State, is prohibited. For any purposes outside those contemplated by this Contract, and for which the State's participation will be referenced, the State shall have the right of review and approval of the use, disclosure, and the finished product prior to its publication. All such requests shall be made in writing and delivered to the Agency Head or their designee. That State shall have sixty (60) days to review such requests and will respond in writing to the Contractor. If the State has not responded within sixty (60) days, the request will be deemed approved.

Contractor is free to publish in academic journals, present at symposia, or use any results arising out of the performance of this Agreement for its own internal instructional and research, or publication (i.e. graduate theses and dissertations) objectives. Any publications or presentations referencing the State shall be made in accordance with this Article 11.

Contractor and State agree that the distribution of proceeds from any commercial licenses for patentable or copyrightable material developed as a result of this Contract, other than publications and presentations

outlined in the preceding paragraph, shall be negotiated by the parties and shall be representative of the inputs of each party.

#### **Indemnity (paragraph 22) and Insurance (paragraph 25)**

As a part of the State, the universities are also precluded from offering indemnity. Likewise, their insurance requirements are unlike those of private entities. You may delete these clauses. However, it is totally appropriate to allocate risks or costs – i.e., “the [University] will be responsible for all costs and claims arising out of its performance hereunder . . . “